

SENATE BILL NO. 399
INTRODUCED BY R. HOLDEN

A BILL FOR AN ACT ENTITLED: "AN ACT ENACTING THE SEXUALLY ORIENTED BUSINESS REGULATION ACT; PROVIDING DEFINITIONS; PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 35] may be cited as the "Sexually Oriented Business Regulation Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 35], the following definitions apply:

(1) "Adult arcade" means any place to which the public is permitted or invited and where coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, 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 displayed are distinguished or characterized by the depicting or describing of specified anatomical areas or specified sexual activities.

(2) (a) "Adult bookstore" or "adult video store" means a commercial establishment that as one of its principal business purposes offers for sale or rent, for any form of consideration, any one or more of the following:

(i) books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, videocassettes, video reproductions, slides, or other visual representations that depict or describe specified anatomical areas or specified sexual activities; or

(ii) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

(b) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified anatomical areas or specified sexual activities and still be categorized as an adult bookstore or adult video store. Other business purposes do not exempt the commercial establishment from being categorized as an adult bookstore or adult video store as long

as one of its principal business purposes is offering for sale or rent, for consideration, the specified materials that depict or describe specified anatomical areas or specified sexual activities.

(c) For purposes of this subsection (2), a principal business purpose exists if materials offered for sale or rental depicting or describing specified anatomical areas or specified sexual activities generate 10% or more of the business's income, account for 10% or more of inventory, or occupy 10% or more of total floor space.

(3) "Adult cabaret" means a nightclub, bar, restaurant, cafe, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

(a) persons who appear in a state of nudity or seminudity;

(b) live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities;

(c) films, motion pictures, videocassettes, slides, photographic reproductions, or other image-producing devices that are characterized by the depiction or description of specified anatomical areas or specified sexual activities; or

(d) persons who engage in exotic or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or patrons.

(4) "Adult motel" means a hotel, motel, or similar commercial establishment that:

(a) offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities and has a sign visible from the public right-of-way that advertises the availability of photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities;

(b) offers a sleeping room for rent for a period of time that is less than 24 hours; or

(c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 24 hours.

(5) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

(6) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity or

seminudity or live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities.

(7) "Department" means the department of public health and human services as provided for in 2-15-2201.

(8) (a) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time, contract, or independent basis, whether or not the person is considered to be an employee, independent contractor, agent, or otherwise and whether or not the person is paid a salary, wage, or other compensation by the operator of the business.

(b) The term does not include a person exclusively on the premises:

(i) for repair or maintenance of the premises or equipment on the premises;

(ii) for the delivery of goods to the premises; or

(iii) as a patron.

(9) "Escort" means a person who, for consideration, agrees or offers to:

(a) act as a companion or date for another person;

(b) privately model lingerie for another person; or

(c) privately perform a striptease for another person.

(10) "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.

(11) "Establishment" means a sexually oriented business or premises on which the sexually oriented business is located.

(12) "Licensed day care center" means a facility licensed by the state that provides care, training, education, custody, treatment, or supervision for more than 12 children under 14 years of age, when the children are not related by blood, marriage, or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

(13) "Licensee" means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

(14) "Live theatrical performance" means a play, skit, opera, ballet, concert, comedy, or musical drama.

(15) "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, for consideration except as provided in [section 33].

(16) "Nudity" or "state of nudity" means the appearance of:

(a) a human bare buttock, anus, gluteal cleft or cleavage, pubic area, male genitals, or female genitals with less than a fully opaque covering;

(b) a female breast with less than a fully opaque covering of any part of the areola; or

(c) human male genitals in a discernibly turgid state even if completely and opaquely covered.

(17) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(18) "Premises" means the real property upon which a sexually oriented business is located and all appurtenances and buildings on the real property, including but not limited to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages adjacent to the sexually oriented business that are under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business operator's license pursuant to [section 13].

(19) "Seminude" or "seminudity" means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. The term includes the entire lower portion of the human female breast and does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, leotard, bathing suit, or other wearing apparel provided that the areola is not exposed in whole or in part.

(20) (a) "Sexual encounter center" means a business or commercial establishment that as one of its principal business purposes offers, for any form of consideration:

(i) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(ii) activities between persons of the opposite sex or persons of the same sex when one or more of the persons is in a state of nudity or seminudity.

(b) For purposes of this subsection (20), a principal business purpose exists if the services offered are intended to generate business income.

(21) "Sexually oriented business" means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(22) "Specified anatomical areas" means:

(a) the human male genitals in a discernibly turgid state, even if fully and opaquely covered; or

(b) less than completely and opaquely covered human genitals, pubic region, or buttocks or a female breast below a point immediately above the top of the areola.

(23) "Specified criminal activity" means prostitution, promoting prostitution, aggravated promotion of prostitution, obscenity, public display or dissemination of obscene materials to minors, sexual abuse of children,

indecent exposure, sexual assault, sexual intercourse without consent, or incest or any sex-related offenses similar to those described in this subsection (23) under the criminal code of another state for which:

(a) less than 2 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a misdemeanor offense;

(b) less than 5 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a felony offense;

(c) less than 5 years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is later, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(24) "Specified sexual activities" means any of the following:

(a) the fondling or other erotic touching of human genitals, pubic region, buttocks, or anus, or of female breasts, whether covered or uncovered;

(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 listed in subsections (24)(a) through (24)(c).

(25) "Transfer of ownership or control" of a sexually oriented business means:

(a) the sale, lease, or sublease of the business;

(b) the transfer of securities that form 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 that 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.

NEW SECTION. Section 3. Classification -- separate licenses required. (1) Sexually oriented businesses are classified as follows:

(a) adult arcades;

(b) adult bookstores or adult video stores;

(c) adult cabarets;

(d) adult motels;

(e) adult motion picture theaters;

- (f) adult theaters;
- (g) escort agencies;
- (h) nude model studios; and
- (i) sexual encounter centers.

(2) A separate application and operator's license is required for each sexually oriented business classification as set forth in subsection (1).

NEW SECTION. Section 4. Transfer of license prohibited. (1) A licensee may not:

- (a) transfer the licensee's license to another person; or
 - (b) operate a sexually oriented business under the authority of a sexually oriented business operator's license at any place other than the address designated in the application and set forth in the operator's license.
- (2) An operator's license is not transferable from one location to another.

NEW SECTION. Section 5. License required -- penalties. (1) A person may not:

- (a) operate a sexually oriented business without a valid sexually oriented business operator's license issued under [section 14];
 - (b) employ a person to work or perform services on the premises of the sexually oriented business if the employee is not in possession of a valid sexually oriented business employee license issued to the employee under [section 17]; or
 - (c) obtain employment with a sexually oriented business if the person is not in possession of a valid sexually oriented business employee license issued to the employee under [section 17].
- (2) It is a defense to an action alleging a violation of subsections (1)(b) and (1)(c) if the employment is of limited duration and for the sole purpose of repair or maintenance of the premises or of machinery or equipment on the premises.

(3) A person convicted of a violation of subsection (1) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(4) The fact that a person possesses any other local or state permits or licenses does not exempt the person from the requirement of obtaining a sexually oriented business operator's license or a sexually oriented business employee license as required by this section.

NEW SECTION. Section 6. Inspection -- penalty for refusal to allow inspection. (1) The department

or the department's designee shall regularly inspect the premises of a sexually oriented business in order to ensure compliance with the provisions of [sections 1 through 35]. An applicant or licensee shall permit representatives of the department, the department's designee, or other state or local entities to inspect the premises at any time that the establishment is open for business. The inspection must be limited to:

(a) visual assessment of the activities conducted in areas to which patrons have access or are allowed access;

(b) requests for inspection of the licenses required under [sections 1 through 35]; and

(c) requests for identification of those individuals who reasonably appear to be under 18 years of age.

(2) A person who operates a sexually oriented business or the operator's agent or employee may not refuse to promptly permit a lawful inspection of the premises. A person convicted of violation of this subsection shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 7. Fees. (1) The annual fee for the issuance or renewal of a sexually oriented business operator's license is \$1,000. The annual fee for the issuance or renewal of a sexually oriented business employee license is \$100.

(2) Fees collected under [sections 1 through 35] must be deposited with the state treasurer in the department's state special revenue fund and must be used to pay the expenses of the administration of [sections 1 through 35].

NEW SECTION. Section 8. Judicial review concerning licenses. (1) Within 14 days of a denial of an initial or renewal application or the suspension or revocation of a license by the department, the applicant or licensee, if the applicant or licensee has exhausted all administrative remedies available within the agency, may seek judicial review of the administrative action by the department in the district court in the county in which the denial, revocation, or suspension occurred or, at the appellant's option, in the district court of the first judicial district.

(2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7.

NEW SECTION. Section 9. Expiration of license -- denial of renewal application. (1) A license expires 1 year from the date of issuance and may be renewed only by making application. Application for renewal must be made at least 60 days before the expiration date. When application is made less than 60 days before

the expiration date, the expiration date of the license is not affected.

(2) Subject to subsection (3), when the department denies renewal of a license after notice and an opportunity for hearing, the applicant may not be issued a license for 1 year from the date of denial.

(3) If a licensee appeals the nonrenewal of a license, the status of the license immediately prior to nonrenewal must be maintained throughout the pendency of the appeal up to and including judicial review on the merits as provided in [section 8].

NEW SECTION. Section 10. Suspension of license. (1) Subject to the provisions of subsection (2), the department shall suspend a license for a period not to exceed 30 days if, after notice and an opportunity for hearing, the department determines that a licensee has a license issued under Title 16 or Title 23, chapter 5, or that a licensee or an employee of a licensee has:

- (a) violated or is not in compliance with any provision of [sections 1 through 35];
- (b) operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
- (c) refused to allow prompt inspection of the sexually oriented business premises as authorized by [section 6]; or
- (d) with knowledge, permitted gambling by any person on the premises.

(2) If a licensee appeals the suspension of a license, the status quo immediately prior to suspension must be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as provided in [section 8].

NEW SECTION. Section 11. Revocation. (1) The department shall, after notice and an opportunity for hearing, revoke a license if:

- (a) a cause for suspension under [section 10] occurs and the license has been suspended within the preceding 12 months;
- (b) a licensee gave materially false or misleading information in the material submitted during the application process;
- (c) a licensee was convicted of a specified criminal activity on a charge that was pending prior to the issuance of the license;
- (d) a licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;

(e) a licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;

(f) a licensee has, with knowledge, permitted prostitution on the premises;

(g) a licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;

(h) a licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;

(i) a licensee is delinquent in payment of any taxes, fees, fines, or penalties relating to the sexually oriented business or premises;

(j) a licensee has, with knowledge, permitted a person under 18 years of age to enter or remain in the establishment;

(k) a licensee has attempted to sell the licensee's sexually oriented business operator's license or has sold, assigned, or transferred ownership or control of the sexually oriented business to a nonlicensee of the establishment; or

(l) a licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises.

(2) Subject to the provisions of subsection (3), if the department revokes a license, the revocation must continue for 1 year and the licensee may not be issued a license for 1 year from the date the revocation became effective.

(3) If a licensee appeals the revocation of a license, the license must remain in effect throughout the pendency of the appeal up to and including judicial review on the merits as provided in [section 8].

NEW SECTION. Section 12. License application requirements -- all applicants. (1) In addition to the requirements of [sections 13 and 16], an applicant for a sexually oriented business operator's license or a sexually oriented business employee license shall comply with the provisions of this section.

(2) All applicants for a license must be qualified according to the provisions of [sections 1 through 35]. The application may request, and the applicant shall provide, information reasonably necessary, including fingerprints, to enable the department to determine whether the applicant meets the qualifications established by [sections 1 through 35]. The applicant shall supplement an application with new information received subsequent to the date the application was originally completed.

(3) Each application must be accompanied by payment of the full application fee and must be submitted

to the department during regular working hours.

(4) Applications for a license under [section 13 or 16] must be on a form provided by the department.

(5) Every application for a license under [section 13 or 16] must contain a statement under oath that:

(a) the applicant has personal knowledge of the information contained in the application and that the information contained in and furnished with the application is true and correct; and

(b) the applicant has read the provisions of [sections 1 through 35].

NEW SECTION. Section 13. Application -- sexually oriented business operator's license. (1)

Applications for a sexually oriented business operator's license or applications for renewal must be made to the department by the intended operator of the sexually oriented business.

(a) If a person who wishes to own or operate a sexually oriented business is an individual, the person shall sign the application for the license as applicant.

(b) If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 10% or greater interest in the sexually oriented business shall sign the application for the license as applicant.

(c) If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate the sexually oriented business, all corporate officers and directors shall sign the application for the license as applicant.

(2) The following information must be provided on the application form for a license:

(a) the name, street address, and mailing address, if different, of the applicant;

(b) a recent photograph of the applicant if the applicant is an individual;

(c) the applicant's driver's license number, social security number, or state or federally issued tax identification number;

(d) the name under which the establishment is to be operated and a general description of the services to be provided. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the applicant shall:

(i) state the sexually oriented business's fictitious name; and

(ii) submit the required registration documents.

(e) a statement of whether the applicant has been convicted of a specified criminal activity or is awaiting trial on pending charges of a specified criminal activity and, if so, the specified criminal activity involved and the date, place, and jurisdiction of each conviction or charge;

(f) (i) a statement:

(A) whether the applicant has had a previous license issued under [sections 1 through 35] or under a similar sexually oriented business regulation statute or ordinance from another state, city, or county denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation; and

(B) whether the applicant is or has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is or was licensed under a sexually oriented business statute or ordinance for which a business license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

(ii) In the event of a prior denial, revocation, or suspension, the applicant shall state the name under which the license was sought or issued and the name of the jurisdiction denying, revoking, or suspending the license and shall describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension must be attached to the application.

(g) whether the applicant holds any other licenses under [sections 1 through 35] or other similar sexually oriented business statutes or ordinances from another state, city, or county and, if so, the names and locations of the other licensed businesses;

(h) the single classification of license, as listed in [section 3], for which the applicant is filing;

(i) the telephone number of the establishment;

(j) the address and legal description of the tract of land on which the establishment is to be located;

(k) if the establishment is in operation, the date on which the owner acquired the establishment for which the sexually oriented business operator's license is sought and the date on which the establishment began operations as a sexually oriented business at the location for which the license is sought;

(l) if the establishment is not in operation, the expected startup date, which must be expressed in number of days from the date of issuance of the license. If the expected startup date is to be more than 10 days following the date of issuance of the license, then a detailed explanation of the construction, repair, or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the construction, repair, or remodeling work.

(3) Each application for a sexually oriented business operator's license must be accompanied by the following:

(a) payment of the full application fee;

(b) if the applicant is a Montana corporation, a certified copy of the articles of incorporation, together with all amendments;

(c) if the applicant is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments;

(d) if the applicant is a limited partnership formed under the laws of this state, a certified copy of the certificate of limited partnership, together with all amendments;

(e) if the applicant is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments;

(f) subject to subsection (3)(g), proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

(g) if the persons identified as the fee owner of the tract of land in subsection (3)(f) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract, or other document evidencing the legally enforceable right of the owner or proposed owner of the sexually oriented business to have or obtain the use and possession of the tract or portion of the tract that is to be used for the sexually oriented business;

(h) a current certificate of survey and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures of any sexually oriented businesses within 1,000 feet of the property to be licensed and the property lines of any established religious institution, school, public park, or public recreation area within 1,000 feet of the property to be licensed that is in existence at the time an application is submitted;

(i) a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the sexually oriented business. The sketch or diagram is not required to be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.

(4) (a) Except as provided in subsection (4)(b), prior to issuance of a sexually oriented business operator's license, the premises must be inspected by the department or the department's designee for compliance with the health, building, and zoning laws of the city, county, or other local subdivision in which the premises are located.

(b) Prior inspection for compliance with health, building, and zoning laws is required only when [section 23 or 24] apply.

(5) If an applicant wishes to operate a sexually oriented business, other than an adult motel, that will

exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, videocassettes, other video reproductions, or live entertainment that depicts specified sexual activities or specified anatomical areas, the applicant shall comply with the application requirements of [section 24].

NEW SECTION. Section 14. Issuance or denial of sexually oriented business operator's license.

(1) Upon application for a sexually oriented business operator's license, the department shall approve or deny issuance of a license within 60 days of receipt of the completed application.

(2) The department shall issue a sexually oriented business operator's license unless, after notice and an opportunity for hearing, the department makes one or more of the following findings by a preponderance of the evidence:

(a) the applicant has failed to provide required information or has falsely answered a question or request for information on the application form;

(b) the applicant is under 18 years of age;

(c) the applicant has been denied a license by the state to operate a sexually oriented business within the preceding 12 months or the applicant's license to operate a sexually oriented business has been revoked within the preceding 12 months;

(d) the applicant is overdue in payment to the state, city, or county for taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to the sexually oriented business for which a license is sought or to the property on which the sexually oriented business is located or will be located;

(e) the applicant has been convicted of a specified criminal activity, unless the applicant's rights have been restored as provided in 46-18-801. The fact that a conviction is being appealed has no effect on the disqualification of the applicant;

(f) the premises to be used for the sexually oriented business have not been approved by the department or the department's designee as being in compliance with applicable laws, if the approval is required under [sections 1 through 35];

(g) the required license fee has not been paid;

(h) the applicant of the proposed establishment is not in compliance with one or more of the provisions of [sections 1 through 35];

(i) the applicant has a license issued under Title 16 or Title 23, chapter 5.

(3) An operator's license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the classification as provided

in [section 3] for which the license is issued. The license must be posted in a conspicuous place at or near the entrance to the sexually oriented business so that the license may be read at any time.

(4) If required under [sections 1 through 35], the department or the department's designee shall complete certification that the premises are in compliance or not in compliance within 45 days of receipt by the department of the completed application. Failure of the department or the department's designee to certify the inspection in a timely matter may not be grounds for refusing to issue a license within the mandatory time period prescribed under subsection (1).

(5) A sexually oriented business operator's license may be issued for only one classification, as set forth in [section 3].

(6) In the event that the department determines, after notice and an opportunity for hearing, that an applicant is not eligible for a sexually oriented business operator's license, the applicant must be given notice in writing of the reasons for the denial within 60 days of the receipt of the completed application by the department. However, the applicant may request, in writing, at any time before the notice is issued that the period be extended for an additional period of not more than 10 days in order to make modifications necessary to comply with [sections 1 through 35].

NEW SECTION. Section 15. Sexually oriented business operator's license -- renewal. (1) A license issued pursuant to [section 14] may be renewed annually upon the written application of the applicant and a finding by the department, after notice and an opportunity for hearing, that the applicant has not been convicted of any specified criminal activity or committed any act during the existence of the previous license that would be grounds to deny an initial license application. The decision on whether to renew a license must be made within 60 days of receipt by the department of the completed application. The renewal of a license is subject to the fee set forth in [section 7].

(2) The items required by [section 13(3)(b) through (3)(h)] may not be required for a renewal application if the applicant states that the documents previously furnished to the department remain correct and current.

NEW SECTION. Section 16. Application -- sexually oriented business employee license. (1) An application for a sexually oriented business employee license must be made by the person to whom it will be issued.

(2) Each applicant shall provide the following information on the application form:

(a) the applicant's given name and any other name by which the applicant is or has been known,

including stage names and aliases;

- (b) the applicant's age, date, and place of birth;
- (c) the applicant's height, weight, hair color, and eye color;
- (d) the applicant's present residence address and telephone number;
- (e) the applicant's present business address and telephone number;
- (f) the date, issuing state, and number of the applicant's photo driver's license or other state-issued form of identification number;
- (g) the applicant's social security number; and
- (h) proof that the individual is at least 18 years of age.

(3) The following must be attached to the application form:

(a) a color photograph of the applicant clearly showing the applicant's face and the applicant's fingerprints on a form provided by a Montana city or county law enforcement agency or the department of justice. Any fees for the photographs and fingerprints must be paid by the applicant.

(b) (i) a statement detailing the license history of the applicant for the 5 years immediately preceding the date of the filing of the application, including whether the applicant, in this or any other state or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended or had any professional or vocational license or permit denied, revoked, or suspended.

(ii) In the event of a prior denial, revocation, or suspension, the applicant shall state the name under which the license was sought or issued and the name of the jurisdiction denying, revoking, or suspending the license and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension must be attached to the application.

(c) a statement of whether the applicant has, within the past 5 years, been convicted of a specified criminal activity or is awaiting trial on pending charges of a specified criminal activity and, if so, the specified criminal activity involved and the date, place, and jurisdiction of each conviction or charge.

(4) The personal information required in subsections (2) and (3) must be kept confidential and may not be disclosed to the public except to the extent required by state or federal law.

NEW SECTION. Section 17. Issuance or denial of sexually oriented business employee license -- temporary license -- renewal. (1) Upon the filing of an application for a sexually oriented business employee license, the department shall issue a temporary license to the applicant. The application must then be referred to the appropriate state agency or local departments for investigation to be made on the information contained

in the application. The application process must be completed within 60 days from the date of the completed application. After the investigation, the department shall issue an employee license, unless after notice and an opportunity for hearing, the department determines by a preponderance of the evidence that one or more of the following findings are true:

(a) the applicant has failed to provide required information or has falsely answered a question or request for information on the application form;

(b) the applicant is under 18 years of age;

(c) the applicant has been convicted of a specified criminal activity;

(d) the sexually oriented business employee license is to be used for employment in a business prohibited by [sections 1 through 35] or other state law or by a local government law or regulation; or

(e) the applicant has had a sexually oriented business employee license revoked by the state within 2 years prior to the date of the current application.

(2) If the sexually oriented business employee license is denied, a temporary license previously issued is immediately void.

(3) Denial of a license is subject to the opportunity of the applicant to contest the action at a hearing under Title 2, chapter 4, part 6.

(4) A license issued under subsection (1) must state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. While engaged in employment or performing services on the premises, an employee shall, at all times, possess the license in a manner as to be available for immediate inspection upon lawful request.

(5) A license issued under subsection (1) may be renewed annually upon the written application of the applicant and a finding by the department that the applicant has not been convicted of any specified criminal activity or committed any act during the existence of the previous license that would be grounds to deny an initial license application. The decision on whether to renew a license must be made within 60 days of the completed application. The renewal of a license is subject to the fee set forth in [section 7].

(6) Nonrenewal of a license is subject to the opportunity of the licensee to contest the action at a hearing under Title 2, chapter 4, part 6.

NEW SECTION. Section 18. Location restrictions. (1) Except as provided in subsection (2), a sexually oriented business must be permitted in any commercial district.

(2) A sexually oriented business may not be operated within:

(a) 600 feet of a church, synagogue, mosque, temple, or building that is used primarily for religious worship and related religious activities;

(b) 1,000 feet of a public or private educational facility, including but not limited to licensed day care centers, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. For purposes of this subsection (2)(b), a school includes the school grounds but does not include the facilities used primarily for another purpose and only incidentally as a school.

(c) 1,000 feet of a public park or recreation area that has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian or bicycle paths, wilderness areas, or other similar public land;

(d) 600 feet of the property line of a lot zoned for residential use and devoted to a residential use; or

(e) 1,000 feet of another sexually oriented business.

(2) A sexually oriented business may not be operated in the same building, structure, or portion of a building or structure containing another sexually oriented business classified under [section 3].

(3) For the purpose of this section, measurement must be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of a premises identified in subsections (1)(a) through (1)(d).

(4) For purposes of subsection (3), the distance between any two sexually oriented businesses must 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.

(5) The provisions of this section must be enforced to the greatest extent that is in compliance with rights guaranteed by the first amendment to the United States constitution and Article II, section 7, of the Montana constitution.

NEW SECTION. **Section 19. Nonconforming use.** (1) Any sexually oriented business lawfully operating on [the effective date of this act] that is in violation of the locational or structural configuration requirements of [sections 1 through 35] must be considered a nonconforming use. The nonconforming use may be permitted to continue for a period not to exceed 2 years, unless the use is terminated sooner for any reason or is voluntarily discontinued for a period of 30 days or more. Nonconforming uses may not be increased,

enlarged, extended, or altered except that the use may be changed to a conforming use.

(2) If two or more sexually oriented businesses are within 1,000 feet of one another and are otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established sexually oriented business is nonconforming.

(3) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business operator's license, of any of the premises identified in [section 18(1)(a) through (1)(d)]. The provisions of this subsection (3) apply only to the renewal of a valid sexually oriented business operator's license and do not apply when an application for a license is submitted after a license has expired or has been revoked.

NEW SECTION. Section 20. Adult motels -- additional regulations -- penalty. (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated three or more times in less than 10 hours creates a rebuttable presumption that the establishment is an adult motel.

(2) It is unlawful for a person who is in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business operator's license to rent or subrent a sleeping room more than two times within a 10-hour period from the time the room is initially rented.

(3) For purposes of subsection (2), "rent" or "subrent" means the act of permitting a room to be occupied for any form of consideration.

(4) A person convicted of a violation of subsection (2) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 21. Escort agencies -- additional regulations -- penalty. (1) An escort agency may not employ any person under 18 years of age.

(2) It is unlawful for a person to act as an escort or agree to act as an escort for any person under 18 years of age.

(3) A person convicted of a violation of subsection (1) or (2) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 22. Nude model studios -- additional regulations -- penalty. (1) A nude model studio may not employ any person under 18 years of age.

(2) It is unlawful for a person under 18 years of age to appear seminude or in a state of nudity in or on

the premises of a nude model studio. It is a defense to prosecution under this subsection (2) if the person under 18 years of age was in a restroom not open to the public view or visible by any other person.

(3) It is unlawful for a person to appear in a state of nudity or, with knowledge, to allow another to appear in a state of nudity in an area of a nude model studio that can be viewed from the public right-of-way.

(4) A nude model studio may not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(5) A person convicted of a violation of any provision of subsections (1) through (4) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 23. Public nudity -- additional regulations -- penalty. (1) It is unlawful for a person to knowingly appear in person in a state of nudity in a sexually oriented business or to depict specified sexual activities in a sexually oriented business.

(2) It is unlawful for a person to knowingly appear in person in a seminude condition on the premises of a sexually oriented business unless the person is an employee who, while seminude, is at least 10 feet from any patron and on a stage raised at least 2 feet from the floor.

(3) It is unlawful for an employee, while seminude on the premises of a sexually oriented business, to solicit any pay or gratuity from any patron, and it is unlawful for any patron to pay or give any gratuity to any employee, while the employee is seminude.

(4) It is unlawful for an employee, while seminude, to touch a patron or the clothing of a patron or for a patron to touch a seminude employee or the clothing of a seminude employee while the employee is on the premises of the sexually oriented business.

(5) A person convicted of a violation of any provision of subsections (1) through (4) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 24. Exhibition of sexually explicit films and videos -- regulation. (1) A person who operates a sexually oriented business, other than an adult motel, that exhibits on the premises in a viewing room of less than 150 square feet of floor space a film, videocassette, or other video reproduction depicting specified anatomical areas or specified sexual activities shall comply with the following requirements:

(a) an application for a sexually oriented business operator's license must be accompanied by a diagram of the premises that shows a plan of the premises specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not

be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram must also designate the place at which the license will be conspicuously posted, if granted. This subsection (1)(a) does not require a professionally prepared diagram in the nature of an engineer's or architect's blueprint. Each diagram must be oriented to the north or to some designated street or object and must be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus 6 inches. The department may waive the diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since the original diagram was prepared.

(b) the applicant shall swear that the application is true and correct;

(c) alteration in the configuration or location of a manager's station may not be made without the prior approval of the department;

(d) the owners and operator of the premises shall ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises;

(e) the interior of the premises must be configured in a manner so that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, the interior of the premises must be configured in a manner so that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection (1)(e) must be by direct line of sight from the manager's station.

(f) the operator and any agents and employees present on the premises shall ensure that the view area specified in subsection (1)(e) remains unobstructed at all times. Doors, walls, partitions, curtains, merchandise, display racks, or other objects may not obstruct from view of the manager's station any portion of the premises to which patrons have access. The operator and any agents and employees present on the premises shall ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons are not permitted, as designated in the application filed pursuant to subsection (1).

(g) the premises must be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 5 foot-candle as measured at the floor level;

(h) the operator and any agents and employees present on the premises shall ensure that the illumination described in subsection (1)(g) is maintained at all times that any patron is present on the premises;

- (i) a viewing room or booth may not be occupied by more than one person at any time;
 - (j) an opening of any kind may not exist between viewing rooms or booths;
 - (k) the operator and any agents and employees present on the premises shall ensure that no more than one person at a time occupies a viewing booth or room and shall ensure that no person attempts to make an opening of any kind between viewing booths or rooms;
 - (l) the operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist;
 - (m) the operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting; and
 - (n) the operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. Wood, plywood, composition board, or other porous material may not be used within 48 inches of the floor.
- (2) A person convicted of a knowing failure to comply with any provision of subsections (1)(a) through (1)(n) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 25. Exterior portions of sexually oriented businesses. (1) It is unlawful for an owner or operator of a sexually oriented business to allow:

- (a) the merchandise or activities of the establishment to be visible from a point outside the establishment;
- or
- (b) the exterior portion of the sexually oriented business to have flashing lights or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner, except to the extent permitted by [sections 1 through 35].

(2) A person convicted of a violation of any provision of subsection (1)(a) or (1)(b) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 26. Signs -- limitations. (1) It is unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than one primary sign and one secondary sign as provided in [sections 27 and 28].

(2) A person convicted of a violation of subsection (1) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 27. Primary signs. (1) Primary signs:

- (a) may have no more than two display surfaces;
- (b) may not contain any photographs, silhouettes, drawings, or pictorial representations in any manner;

and

- (c) may contain only the name, address, and phone number of the sexually oriented business.

(2) Each letter forming a word on a primary sign must be a solid color and must be the same print-type, size, and color. The background behind the lettering on the display surface of a primary sign must be of a uniform and solid color.

- (3) Each display surface on a primary sign:

- (a) may not contain any flashing lights;
- (b) must be a flat plane, rectangular in shape;
- (c) may not exceed 75 square feet in area; and
- (d) may not exceed 10 feet in height or 10 feet in length.

NEW SECTION. Section 28. Secondary signs. (1) Secondary signs:

- (a) may have only one display surface;
- (b) may not contain any flashing lights;
- (c) may not contain any photographs, silhouettes, drawings, or pictorial representations in any manner;

and

- (d) may contain only the name, address, and phone number of the establishment.

(2) Each letter forming a word on a secondary sign must be a solid color and must be the same print-type, size, and color. The background behind the lettering on the display surface of a secondary sign must be of a uniform and solid color.

- (3) A display surface on a secondary sign:

- (a) must be a flat plane, rectangular in shape;
- (b) may not exceed 20 square feet in area;
- (c) may not exceed 5 feet in height and 4 feet in width; and
- (d) must be affixed or attached to any wall or door of the establishment.

NEW SECTION. Section 29. Sale, use, or consumption of alcoholic beverages prohibited. (1) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(2) A person convicted of a violation of subsection (1) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 30. Entry by minor prohibited -- attendant required. (1) It is unlawful to allow a person who is under 18 years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.

(2) The operator of each sexually oriented business shall ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during the sexually oriented business's regular business hours. The attendant shall prohibit any person who is under 18 years of age from entering the sexually oriented business. It is presumed that an attendant knew that a person was under 18 years of age unless the attendant asked for and was furnished a valid driver's license, commercial driver's license, or Montana identification card issued under 61-12-501, indicating that the person is 18 years of age or older.

(3) A person convicted of a violation of any provision of subsection (1) or (2) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 31. Massages or baths administered by person of opposite sex prohibited in sexually oriented businesses -- penalties. (1) It is unlawful for any sexually oriented business, regardless of whether it is located in a public or private facility, to operate as a massage salon, massage parlor, or any similar type of business where any physical contact with the recipient of massage services is provided by a person of the opposite sex.

(2) A person convicted of a violation of subsection (1) shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

NEW SECTION. Section 32. Hours of operation. (1) A sexually oriented business, except an adult motel, may not remain open at any time between the hours of midnight and 11 a.m. on weekdays and Saturdays.

(2) A sexually oriented business may not be open for business or remain open for business on Sunday or any legal holiday recognized by this state.

NEW SECTION. Section 33. Exemptions. (1) It is a defense to prosecution under [sections 1 through 35] that a person appearing in a state of nudity did so in a modeling class operated:

(a) by a proprietary school licensed by the state of Montana, college, junior college, or university

supported entirely or partly by taxation; or

(b) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(2) Movies rated G, PG, PG-13, or R by the motion picture association of america and live theatrical performances with serious artistic, social, or political value that depict or describe specified anatomical areas or specified sexual activities are expressly exempted from regulation under [sections 1 through 35].

NEW SECTION. Section 34. Notices. (1) Notice required or permitted to be given under [sections 1 through 35] to any applicant, operator, or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license or any notice of address change that has been received by the department. Notices mailed under this section must be considered given upon deposit in the United States mail. If any notice given by mail is returned by the postal service, the department shall post the notice at the principal entrance to the establishment.

(2) Any notice required or permitted to be given to the department by any person under [sections 1 through 35] is not considered given until it is received in the office of the director of the department.

(3) Each owner, who is designated on the license application, and each operator shall furnish notice to the department in writing of any change of residence or mailing address.

NEW SECTION. Section 35. Injunction. A person who operates or causes to be operated a sexually oriented business without a valid sexually oriented business operator's license or in violation of [section 18] is subject to a suit for injunction as well as prosecution for criminal violations. Each day that a sexually oriented business operates in violation of [section 5 or 18] is a separate offense or violation.

NEW SECTION. Section 36. Codification instruction. [Sections 1 through 35] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 35].

NEW SECTION. Section 37. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 38. Effective date.** [This act] is effective July 1, 2001.

- END -

