

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 968

Introduced by DeKay, 40; Conrad, 46; Hardin, 48; Holdcroft, 36; Hughes,
24; Kauth, 31; Linehan, 39; Lippincott, 34; Murman, 38.

Read first time January 04, 2024

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 81-1429.02 and 81-1429.03, Revised Statutes Cumulative Supplement,
3 2022; to adopt the Live Adult Entertainment Establishment Fee Act;
4 to harmonize provisions; to provide an operative date; to provide
5 severability; and to repeal the original sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and may be
2 cited as the Live Adult Entertainment Establishment Fee Act.

3 Sec. 2. It is the intent of the Legislature to ameliorate the
4 negative secondary effects that occur in the proximity of or within live
5 adult entertainment establishments, including sexual assault,
6 prostitution, domestic violence, disorderly conduct, human trafficking,
7 and a variety of other crimes and social ills encouraged and promoted by
8 live adult entertainment establishments, so as to promote the health,
9 safety, and welfare of the citizens of Nebraska pursuant to the state's
10 inherent police powers afforded to the State of Nebraska through the
11 Tenth Amendment of the United States Constitution. The Live Adult
12 Entertainment Establishment Fee Act is not intended to directly or
13 indirectly impose limitations or restrictions on live nude dancing, nor
14 is it the intent of the act to restrict or deny access by adults to live
15 nude dancing performances that may be protected by the First Amendment of
16 the United States Constitution or by the Constitution of Nebraska.

17 Sec. 3. For purposes of the Live Adult Entertainment Establishment
18 Fee Act:

19 (1) Admit means to allow entry of a person into a live adult
20 entertainment establishment;

21 (2) Clothing means a garment used to cover the body, or a part of
22 the body, typically consisting of cloth or a cloth-like material. Paint,
23 latex, wax, gel, foam, film, coatings, and other substances applied to
24 the body in a liquid or semi-liquid state are not clothing;

25 (3) Customer means any person on the premises of a live adult
26 entertainment establishment except:

27 (a) An operator, agent, independent contractor, or employee of the
28 live adult entertainment establishment; or

29 (b) A person who is on the premises exclusively for repair or
30 maintenance of the premises or for the delivery of goods to the premises;

31 (4) Department means the Department of Revenue;

1 (5) Live adult entertainment establishment means a nightclub,
2 striptease club, bar, restaurant, or similar commercial enterprise that:

3 (a) During at least thirty consecutive or nonconsecutive days in a
4 calendar year, provides to an audience of two or more customers live
5 entertainment or performances by employees, agents, or independent
6 contractors of the establishment that:

7 (i) Involve nude or partially nude individuals; and

8 (ii) Appeal primarily to an interest in nudity or sex, when
9 considered as a whole; and

10 (b) Authorizes on-premises consumption of beer, wine, liquor, or
11 other alcoholic beverages, regardless of whether the consumption of
12 alcoholic beverages is under a license or permit issued under the
13 Nebraska Liquor Control Act;

14 (6) Nude or partially nude individual means an individual who is:

15 (a) Entirely unclothed; or

16 (b) Clothed in a manner that leaves uncovered or visible through
17 less than fully opaque clothing any portion of the individual's genitals,
18 pubic area, or buttocks or, if the individual is female, any portion of
19 the breasts below the top of the areola; and

20 (7) Operator means any person who owns or operates a live adult
21 entertainment establishment.

22 Sec. 4. (1) A fee is hereby imposed upon each operator who operates
23 a live adult entertainment establishment in this state. The fee shall be
24 in an amount equal to five dollars for each entry by each customer
25 admitted to the establishment, except that more than one entry by the
26 same customer on the same business day at the same location shall be
27 counted as only one entry. For purposes of this subsection, a business
28 day begins when the establishment opens and continues until the
29 establishment closes.

30 (2) The fee imposed under this section is in addition to all other
31 taxes, fees, and penalties imposed on live adult entertainment

1 establishments.

2 (3) This section does not require an operator to impose a fee on a
3 customer of the live adult entertainment establishment. An operator has
4 the discretion to determine the manner in which the establishment derives
5 the money required to pay the fees imposed under this section.

6 Sec. 5. (1) On or before the last day of the month immediately
7 following the last day of each calendar quarter, an operator of a live
8 adult entertainment establishment shall:

9 (a) Remit the fees imposed by section 4 of this act to the
10 department in a manner prescribed by the department; and

11 (b) File a report electronically with the department. The report
12 shall include the following information:

13 (i) The name of the operator;

14 (ii) The address of the live adult entertainment establishment;

15 (iii) The total number of customers admitted to the live adult
16 entertainment establishment during the previous calendar quarter;

17 (iv) The total amount of fees due for the previous calendar quarter;
18 and

19 (v) Any other information required by the department.

20 (2) Notwithstanding any other provision of this section concerning
21 the time within which an operator must file his or her report, if an
22 operator ceases to operate a live adult entertainment establishment, then
23 the operator must file a final report under this section with the
24 department not more than one calendar month after ceasing operations.

25 (3) Failure to file a report as required in this section, filing
26 such report late, failure to pay the fees due, or underpayment of such
27 fees shall result in a penalty of five percent of the amount due being
28 imposed for each month the report is overdue or the payment is
29 delinquent, except that the penalty shall not exceed ten thousand
30 dollars.

31 Sec. 6. (1) Each operator of a live adult entertainment

1 establishment shall maintain records necessary to determine the amount of
2 fees due under the Live Adult Entertainment Establishment Fee Act. The
3 records shall not contain the names or personal information of any of the
4 customers of the establishment.

5 (2) The department may require an operator, by written notice served
6 on the operator, to make or keep the records described in subsection (1)
7 of this section in a manner in which the department considers sufficient
8 to show the amount of fees due from such operator.

9 (3) After written notice by the department, the operator shall make
10 the records described in this section available for examination or audit
11 by the department or an authorized agent of the department.

12 Sec. 7. The department shall remit all fees and penalties collected
13 under the Live Adult Entertainment Establishment Fee Act to the State
14 Treasurer for credit as follows:

15 (1) Fifty percent of such fees and penalties shall be credited to
16 the Sexual Assault Payment Program Cash Fund; and

17 (2) Fifty percent of such fees and penalties shall be credited to
18 the Human Trafficking Victim Assistance Fund.

19 Sec. 8. The department may adopt and promulgate rules and
20 regulations to carry out the Live Adult Entertainment Establishment Fee
21 Act.

22 Sec. 9. Section 81-1429.02, Revised Statutes Cumulative Supplement,
23 2022, is amended to read:

24 81-1429.02 The Human Trafficking Victim Assistance Fund is created.
25 The fund shall contain money donated as gifts, bequests, or other
26 contributions from public or private entities and money credited to the
27 fund pursuant to section 7 of this act. Funds made available by any
28 department or agency of the United States may also be credited to the
29 fund if so directed by such department or agency. The fund shall be
30 administered by the Nebraska Commission on Law Enforcement and Criminal
31 Justice. All money credited to such fund shall be used to support care,

1 treatment, and other services for victims of human trafficking and
2 commercial sexual exploitation of a child. Any money in the fund
3 available for investment shall be invested by the state investment
4 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
5 State Funds Investment Act.

6 Sec. 10. Section 81-1429.03, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 81-1429.03 (1) The full out-of-pocket cost or expense that may be
9 charged to a sexual assault victim in connection with a forensic medical
10 examination shall be paid from the Sexual Assault Payment Program Cash
11 Fund. A report of a forensic medical examination shall not be remitted to
12 the patient or his or her insurance for payment.

13 (2) Except as provided under section 81-2010, all forensic DNA tests
14 shall be performed by a laboratory which is accredited by the American
15 Society of Crime Laboratory Directors/Laboratory Accreditation Board or
16 by any other national accrediting body or public agency which has
17 requirements that are substantially equivalent to or more comprehensive
18 than those of the society.

19 (3) The full out-of-pocket cost or expense to be paid from the
20 Sexual Assault Payment Program Cash Fund for a forensic medical
21 examination described in subsection (1) of this section shall include:

22 (a) An examiner's fee for:

- 23 (i) Examination of physical trauma;
24 (ii) Determination of penetration or force;
25 (iii) Patient interview; and
26 (iv) Collection and evaluation of evidence;

27 (b) An examination facility fee for the:

28 (i) Emergency room, clinic room, office room, or child advocacy
29 center; and

30 (ii) Pelvic tray and other medically required supplies; and

31 (c) The laboratory fees for collection and processing of specimens

1 for criminal evidence, the determination of the presence of any sexually
2 transmitted disease, and pregnancy testing.

3 (4) There is established within the Department of Justice, under the
4 direction of the Attorney General, the position of administrator for the
5 Sexual Assault Payment Program. The purpose of the program and the
6 responsibilities of the administrator shall be to coordinate the
7 distribution of forensic medical examination kits to health care
8 providers at no cost to the providers, oversee forensic medical
9 examination training throughout the state, and coordinate payments from
10 the Sexual Assault Payment Program Cash Fund.

11 (5) The Sexual Assault Payment Program Cash Fund is created. The
12 fund shall be administered by the commission. The fund shall consist of
13 any money appropriated to it by the Legislature, any money credited to
14 the fund pursuant to section 7 of this act, and any money received by the
15 commission for the program, including federal and other public and
16 private funds. The fund shall be used for the payment of the full out-of-
17 pocket costs or expenses for forensic medical examinations pursuant to
18 subsection (3) of this section, for the purpose set forth in subsection
19 (4) of this section, and for the purchase of forensic medical examination
20 kits. The fund shall be used to pay only those charges determined by the
21 commission to be reasonable and fair. The fund shall be used to pay up to
22 two hundred dollars for the examiner's fee and up to three hundred
23 dollars for the examination facility fee. The examiner and facility shall
24 provide additional documentation as determined by the commission for
25 payment of charges in excess of such amounts. The fund may also be used
26 to facilitate programs that reduce or prevent the crimes of domestic
27 violence, dating violence, sexual assault, stalking, child abuse, child
28 sexual assault, human trafficking, labor trafficking, or sex trafficking
29 or that enhance the safety of victims of such crimes. Any money in the
30 fund available for investment shall be invested by the state investment
31 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska

1 State Funds Investment Act.

2 Sec. 11. This act becomes operative on January 1, 2025.

3 Sec. 12. If any section in this act or any part of any section is
4 declared invalid or unconstitutional, the declaration shall not affect
5 the validity or constitutionality of the remaining portions.

6 Sec. 13. Original sections 81-1429.02 and 81-1429.03, Revised
7 Statutes Cumulative Supplement, 2022, are repealed.