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SFA



BILL ANALYSIS

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House Bill 4327 (Substitute H-4 as passed by the House)
House Bill 5124 (Substitute H-4 as passed by the House)
House Bill 5125 (Substitute H-3 as passed by the House)
House Bill 5126 (Substitute H-2 as passed by the House)
House Bill 5127 (Substitute H-2 as passed by the House)
House Bill 5128 (Substitute H-3 as passed by the House)
House Bill 5129 (Substitute H-2 as passed by the House)
House Bill 5130 (Substitute H-2 as passed by the House)
House Bill 5131 (as passed by the House)
House Bill 5132 (Substitute H-4 as passed by the House)
House Bill 5133 (Substitute H-1 as passed by the House)
House Bill 5134 (Substitute H-1 as passed by the House)

Sponsor: Representative Triette Reeves (House Bill 4327)
Representative Michael Bishop (House Bill 5124)
Representative Joanne Voorhees (House Bill 5125)
Representative Janet Kukuk (House Bill 5126)
Representative Eileen DeHart (House Bill 5127)
Representative Ken Bradstreet (House Bill 5128)
Representative Cameron Brown (House Bill 5129)
Representative Sue Tabor (House Bill 5130)
Representative Charles LaSata (House Bill 5131)
Representative James Koetje (House Bill 5132)
Representative Laura M. Toy (House Bill 5133)
Representative Gloria Schermesser (House Bill 5134)

House Committee: Constitutional Law and Ethics
Senate Committee: Judiciary

Date Completed: 9-19-00

CONTENT

House Bill 4327 (H-4) would amend Public Act 33 of 1978, which prohibits the dissemination, exhibition, or display of sexually explicit material to minors, to prohibit the display of sexually explicit material that was harmful to minors, except in a "restricted area".

House Bills 5124 (H-4) and 5126 (H-2) through 5132 (H-4) would add Article 17a to the Occupational Code to regulate adult entertainment establishments and massage establishments. The bills would do the following:

- Require the licensure of adult entertainment establishments.
- Impose requirements for premises where specific sexual activity was exhibited.
- Prohibit adult entertainment establishments from operating within 3,000 feet of a residential area, school, house of worship, or child care organization.
- Specify prohibitions that would apply to massage establishments.

- Establish a minimum age of 18 for patrons of adult entertainment establishments.
- Prescribe adult entertainment establishments' hours of operation.
- Provide that adult entertainment establishments would be subject to inspection by the Department of Community Health (DCH) and law enforcement officials.
- Prescribe criminal penalties for violations.

House Bill 5125 (H-3) would amend the State License Fee Act to require the Department of Consumer and Industry Services (DCIS) to assess fees on each adult entertainment applicant and licensee.

House Bill 5133 (H-1) would amend the Public Health Code to do the following:

- Prohibit the construction, use, or operation of a facility for the purpose of high risk sexual conduct.
- Prohibit the ownership, management, or

operation of a facility containing an enclosure used for high risk sexual conduct or video or live entertainment, unless certain conditions were met.

- **Authorize the DCH to inspect sites of high risk sexual conduct.**
- **Authorize the DCH to declare a facility a public nuisance and order its abatement or take other actions.**
- **Prescribe criminal penalties for violations.**

House Bill 5134 (H-1) would amend the Revised Judicature Act to provide that a reasonable attorney's fee could be awarded to a private citizen who successfully brought a public nuisance action against an adult entertainment establishment.

House Bills 5124 (H-4) through 5132 (H-4) are tie-barred to each other. House Bill 5134 (H-1) is tie-barred to House Bill 5124.

House Bill 4327 (H-4)

Public Act 33 of 1978 provides that a person is guilty of displaying sexually explicit matter to a minor if he or she has managerial responsibility for a business enterprise selling visual matter that depicts sexual intercourse or sadomasochistic abuse and is harmful to minors, and that person knowingly permits a minor who is not accompanied by a parent or guardian to examine that matter. A violation is a misdemeanor, punishable by up to 90 days' imprisonment and/or a maximum fine of \$5,000. The bill would revise that violation, but retain the penalty. Under the bill, a person who possessed managerial responsibility for a business selling sexually explicit visual or verbal material that depicted sexual intercourse or sadomasochistic abuse and was harmful to minors could not display that material, knowing its nature, unless the person did so in a "restricted area". (This restriction would apply to all displays, not just displaying the material to minors.) The bill also would exempt from this violation a radio or television broadcaster licensed by the Federal Communications Commission (FCC).

"Restricted area" would mean any of the following:

- An area behind a counter, if access were limited only to employees who were not minors and sexually explicit visual or verbal material were displayed only in devices that prevented public view of the lower two-thirds of the material's cover or exterior.
- A building, or a distinct and enclosed area or room within a building, if access by minors were

prohibited, notice of the prohibition were prominently displayed, and access were monitored to prevent minors from entering.

- An area with at least 75% of its perimeter surrounded by walls or solid, nontransparent dividers that were sufficiently high to prevent a minor in a nonrestricted area from seeing sexually explicit visual or verbal material within the perimeter if the point of access provided prominent notice that access to minors was prohibited.

The Act also prohibits a person from knowingly disseminating sexually explicit matter to a minor by either disseminating to a minor sexually explicit visual or verbal material that is harmful to minors or exhibiting to a minor a sexually explicit performance that is harmful to minors. A violation is a felony, punishable by up to two years' imprisonment, a maximum fine of \$10,000 or both. The Act provides that the violation does not apply to the dissemination of sexually explicit matter to a minor by certain parties. The bill would add to the list of exemptions a radio or television broadcaster licensed by the FCC.

House Bill 5124 (H-4)

Prohibitions

Beginning 180 days after the bill's effective date, a person could not engage in, carry on, or participate in the operation of an adult entertainment establishment unless he or she was licensed by the DCIS under Article 17a.

A person engaged in the management of an adult entertainment establishment, and each of the following persons, as applicable, engaging in, carrying on, or participating in the operation of an adult entertainment establishment in violation of the bill, would be guilty of a misdemeanor punishable by up to six months' imprisonment, a maximum fine of \$10,000, or both:

- A principal owner, director, or officer, if the violator were a corporation.
- A general partner or principal owner, if the violator were a partnership.
- A principal owner or manager, if the violator were a limited liability company.

A certificate by the DCIS that a diligent search of the Department's records kept in conformity with Article 17a had failed to disclose the existence of a valid license for an adult entertainment establishment would be prima facie evidence of a violation by the

establishment. (Prima facie evidence is evidence sufficient to establish a given fact unless rebutted.)

Definitions for Article 17a

“Adult bookstore” would mean an establishment that had as a substantial or significant portion of its stock and trade in books, films, videocassettes, or magazines and other periodicals that were distinguished or characterized by their emphasis on matter depicting, describing, or relating to specific sexual activity and that had facilities for the presentation of adult entertainment for observation by patrons in the establishment. “Adult cabaret” would mean an establishment that featured topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.

“Adult entertainment” would mean any exhibition of any adult-oriented motion picture, live performance, display, or dance of any type that had as a significant or substantial portion of that exhibition any actual or simulated performance or exhibition of a specific sexual activity, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers. “Adult entertainment establishment” would include any of the following:

- An adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult cabaret, or massage establishment.
- A premises to which the public patrons or members were invited or admitted and that was so physically arranged as to provide booths, cubicles, rooms, compartments, or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or in which an entertainer provided adult entertainment to a member of the public, patron, or member for profit.
- An adult entertainment studio or any premises that was physically arranged and used as an adult entertainment studio, whether advertised or represented as an adult entertainment studio, exotic dance studio, encounter studio, sensitivity studio, model studio, escort service, escort, or any other similar term.

“Adult mini-motion picture theater” would mean an enclosed building with a capacity of less than 50 persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to a specific sexual activity for observation by patrons in the establishment. “Adult motion picture theater” would mean an enclosed building with a capacity of 50 or more persons regularly used for presenting material having as a dominant theme or presenting material

distinguished or characterized by an emphasis on matter depicting, describing, or relating to a specific sexual activity for observation by patrons in the establishment.

“Entertainment” would mean any live exhibition or dance of any type, pantomime, modeling, or other live performance.

“Massage establishment” would mean a business or enterprise that offered, sold, or provided, or held itself out as offering, selling, or providing massages that included bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body, by either male or female employees or attendants, by hand or by electrical or mechanical device, on or off the premises. “Massage establishment” would not include the business or occupation of a barber, cosmetologist, or person engaged in the practice of mortuary science licensed under the Occupational Code, a chiropractor, dentist, physician, person engaged in the practice of nursing, optometrist, physical therapist, podiatrist, or occupational therapist licensed or registered under Article 15 of the Public Health Code, a health facility or agency licensed and certified under Article 17 of the Public Health Code, an athletic coach or athletic trainer, or a business or enterprise that only used massage therapists to sell or provide massages. “Treat” would mean to administer the services provided by a massage establishment.

“Massagist” would mean an individual who performed massage services for a massage establishment or a self-employed individual who performed massage services, and would not include a massage therapist. “Massage therapist” would mean an individual who met any of the following:

- Was an active practicing member of the American Massage Therapy Association, Associated Bodywork and Massage Professionals, International Myomassethics Federation, or other massage association acceptable to the DCIS, if at least 500 hours of training in massage therapy and bodywork were required as a condition of membership.
- Was a graduate of a massage therapy school licensed or certified by any state, if the school required at least 500 hours of training in massage therapy and bodywork for graduation.
- Was licensed or certified as a massage therapist by any state that required at least 500 hours in massage therapy and bodywork as a condition of licensure or certification.
- Had successfully completed a massage training program at a community college, college or university, or vocational or technical school in any state, if the program required at least 500 hours

of training in massage therapy and bodywork for completion.

- Had passed the National Certification Exam for Therapeutic Massage and Bodywork Practitioners administered by the National Certification Board for Therapeutic Massage and Bodywork, if adopted by the DCIS, or another certification examination acceptable to the DCIS.

“Partner” would mean a general or limited partner. “Partnership” would mean a general or limited partnership. “Principal owner” would mean a person who owned 10% or more of the outstanding equity interest of a licensee including, but not limited to, stock in a corporation, partnership interest in a partnership, or membership interest in a limited liability company.

“Peace officer” would mean the Attorney General, a deputy or assistant to the Attorney General, or a law enforcement officer as that term is defined in Section 2 of the Michigan Law Enforcement Officers Training Council Act (MCL 28-.602).

“Specific sexual activity” would mean one or more of the following sexual activities or exhibitions of anatomical areas: human genitals in a state of sexual stimulation or arousal; an act or representation of an act of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or excretory function; fondling or erotic touching of human genitals, pubic regions, buttocks, or female breasts; less than completely and opaquely covered human genitals or pubic regions, buttocks, or female breasts below the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

House Bill 5125 (H-3)

Under the bill, the Department of Consumer and Industry Services would have to assess each adult entertainment applicant and licensee a license fee based on the actual cost of processing and administering the State License Fee Act. The DCIS would have to estimate those costs at the beginning of the year and could adjust the fee to cover all costs at the end of the year. The DCIS could not spend funds from the General Fund.

House Bill 5126 (H-2)

Licensure

A license issued under Article 17a would not be transferrable. In addition to any penalties assessed under Article 6 of the Occupational Code, intentionally using or permitting the use, or attempting to use or permit the use, of a license issued under Article 17a by or on behalf of a person

other than the licensee would be a misdemeanor punishable by a maximum fine of \$500, up to six months’ imprisonment, or both.

A license under Article 17a would have to contain the original or facsimile signature of the DCIS Director, bear in bold letters the date of issuance and termination, and state the name and address of the licensee. A license for the operation of an adult entertainment establishment would have to describe the nature of the business or enterprise as an adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult cabaret, or massage establishment, if applicable, and specify the location of the premises at which the business was authorized. If the licensee were a corporation, the license would have to state the name and address of the corporation’s resident agent in Michigan and the address of its registered office.

DCIS Database & Background Check

The DCIS would have to maintain an alphabetized or computerized database containing a photograph and the full name, nicknames or aliases, residential address, business address, Social Security number, and driver’s license number of every adult establishment applicant and licensee. An applicant for a license would have to provide a photograph and the same information for any other person whose signature appeared on an application or on any supporting documents submitted with an application for a license under Article 17a. Each database would have to indicate the eligibility of an applicant as a licensee and whether a person’s signature on an application precluded the issuance of a license based on that signature.

In considering license application, the DCIS would have to submit names of applicants and those appearing in applications to the Federal Bureau of Investigation and the U.S. Department of Justice for the purpose of a record check. Any records or information obtained by or disclosed to the DCIS in connection with an application for a license or license renewal under Article 17a would be confidential records of the Department and could not be available for public inspection or copying or divulged to any person except as provided in the bill. The DCIS could disclose those records or information to law enforcement officials, in connection with an action brought pursuant to the Occupational Code, upon court order, or as described below.

An applicant or licensee could execute and deliver a consent, in a form acceptable to the DCIS and the Liquor Control Commission (LCC), to one or both of the following disclosures:

- The disclosure to the DCIS of any records or information obtained by or disclosed to the LCC in connection with any past or pending application of the applicant or licensee for a Class C license, a topless activity permit, or a topless activity-entertainment permit under the Liquor Control Code. The DCIS would have to consider any information or records provided pursuant to this disclosure for purposes of any pending or future application for licensure under Article 17a.
- The disclosure to the LCC of any records or information obtained by or disclosed to the DCIS in connection with any past or present application for a license or license renewal under Article 17a. The LCC would have to consider any information or records provided pursuant to this disclosure for purposes of any pending or future application for a Class C license or a topless activity or topless activity-entertainment permit under the Liquor Control Code.

Scope of Licensure & Sanctions

All of the following would apply to an adult entertainment establishment:

- A license issued under Article 17a would authorize the licensee to engage in or carry on the business of operating an adult entertainment establishment only in the premises specified in the license.
- An applicant or licensee seeking a license or renewal would have to document in its application that the location or proposed location of the place of business was in compliance with all applicable laws and ordinances.
- If a licensee changed the location of the place of business during the period for which the license was issued, the license would be revoked and the licensee would have to submit a new application for a new license to conduct business at the new location.

In addition to any penalties assessed under Article 6 of the Occupational Code, a person that was the holder of a license issued under Article 17a, a person engaged in the management of the person's adult entertainment establishment, and each of the following persons, as applicable, engaging in, carrying on, or participating in the operation of the business of operating a massage establishment or an adult bookstore at a place other than that authorized by the license would be guilty of a misdemeanor punishable by a maximum fine of \$500, up to six months' imprisonment, or both:

- A principal owner, director, or officer, if the violator were a corporation.
- A general partner or principal partner, if the violator were a partnership.

- A principal owner or manager, if the violator were a limited liability company.

Unless an applicable zoning ordinance provided otherwise, an adult entertainment establishment could not operate within 3,000 feet of an area zoned as residential by an applicable zoning ordinance, a school, a church or other house of religious worship, or a child care organization (as defined in MCL 722.111). In addition to any penalties assessed under Article 6 of the Occupational Code, a violation of this provision would be a misdemeanor, punishable by a \$5,000 fine.

House Bill 5127 (H-2)

Display of License

A person licensed to operate an adult entertainment establishment under Article 17a would have to display the license in a conspicuous manner on the premises for which the license was issued. In addition to any penalties assessed under Article 6 of the Code, a violation of this provision would be a misdemeanor punishable by a maximum fine of \$1,000.

Application for Licensure

The DCIS could not issue a license for the operation of an adult entertainment establishment unless the applicant had executed and filed with the Department at the applicant's expense a certified or sworn application in compliance with Article 17a. A license application would have to state the full name of the applicant, including nicknames or aliases; residential address; place of employment, including address and telephone number; Social Security number; date of birth; driver's license number; a photograph of the applicant taken within 30 days of the application; Federal employer's identification number; and an address of the premises for which the application was made. The application would have to identify, specifically, who was to be responsible for the day-to-day management of the adult entertainment establishment.

If an applicant were a corporation or a limited liability company, the application would have to include all of the following:

- A copy of the articles or certificate of incorporation, or articles of organization, certified by the DCIS for a domestic corporation or the appropriate official of the state of incorporation or formation for a corporation or company formed in another state.
- If the applicant were formed in another state, a certificate of authority to transact business from the DCIS.

-- A certificate containing the full name, including nicknames or aliases; place of employment, including address and telephone number; Social Security number; date of birth; driver's license number; and a photograph taken within 30 days of the application of each corporate director, officer, and principal owner, or each manager and principal owner of the limited liability company. Each director, officer, manager, and principal owner would have to sign the certificate, and each signature would have to be an original signature separately witnessed and acknowledged by a notary public.

The adult entertainment establishment would have to maintain in the premises one or more manager's stations. A manager's station could not exceed 32 square feet of floor area. The establishment could not alter the configuration or location of a manager's station without the prior written approval of the DCIS. The establishment would have to ensure that at least one employee was on duty and situated in each manager's station at all times that a patron was present inside the premises.

If the applicant were a partnership or other unincorporated association, the application would have to include a certificate containing the applicant's full name, including nicknames or aliases; place of employment, including address and telephone number; Social Security number; date of birth; driver's license number; and a photograph taken within 30 days of application of every partner or member. Each partner or member would have to sign the certificate and each signature would have to be an original signature separately witnessed and acknowledged by a notary public.

Exhibition of Specific Sexual Activity

An adult entertainment establishment that exhibited on its premises, in a viewing room of less than 150 square feet of floor space, a motion picture, videocassette or other video reproduction, or live entertainment that displayed a specific sexual activity would have to comply with both of the requirements described below.

In addition to other application requirements, the establishment would have to include in its application a diagram of the premises, showing the layout or floor plan of the premises. The diagram would have to specify the location of each manager station, the location of all overhead lighting fixtures in the premises, and any portion of the premises in which patrons were not permitted. The diagram also would have to designate the place where the establishment would conspicuously post the license. A professionally prepared diagram, such as an engineer's or architect's blueprint, would not be required but the diagram would have to be oriented to the north or to some designated street or object and 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 six inches. The DCIS could waive the diagram requirement if the licensee resubmitted a diagram previously submitted to the DCIS and certified that the configuration of the premises had not been altered since the diagram was prepared.

House Bill 5128 (H-3)

License Approval or Denial

The DCIS could not issue a license unless the applicant appeared personally before the DCIS Director. The applicant would have to affix his or her original signature and Social Security number to the application in the presence of the Director and certify or acknowledge under oath that the application was the applicant's act and deed and that the facts stated in the application were true. If the applicant were a corporation, this requirement could be satisfied by a director on behalf of the corporation. If the applicant were a limited liability company, the requirement could be satisfied by a manager. If the applicant were a partnership or other unincorporated association, the requirement could be satisfied by a general partner or member.

The DCIS would have to approve or deny the issuance of a license under Article 17a within 120 days after receiving a completed application. An applicant that held a valid adult entertainment establishment license at the time the DCIS received a completed application could continue to operate the licensed business while the DCIS considered whether to approve or deny the application.

The DCIS could not issue a license for the operation of an adult entertainment establishment to any of the following:

- A person who, in Michigan or any other state or jurisdiction, within three years before the date of application, was convicted of, or was in jail or prison for a conviction for a misdemeanor involving lewdness, prostitution, pandering or promoting prostitution; sexual assault or assault with intent to commit criminal sexual conduct (CSC), sexual misconduct, indecent exposure, incest, rape or CSC, or sodomy, or had been a registered sex offender.
- A person who, in Michigan or any other state or jurisdiction, within seven years before the date of application, was convicted of, or was in jail or prison for a conviction for, a felony involving lewdness, prostitution, pandering or promoting prostitution, sexual assault or assault with intent to commit CSC, sexual misconduct, indecent exposure, incest, rape or CSC, or sodomy.
- A person who held a license for the operation of an adult entertainment establishment under Article 17a that was revoked within two years before the date of application.
- A person who was an officer, director, or principal owner of a corporation, a manager or principal owner of a limited liability company, or a partner or member of a partnership or other unincorporated association, that held a license for the operation of an adult entertainment

establishment that was revoked within two years before the date of application for an offense or violation committed by anyone while the person served in that capacity for the corporation, limited liability company, partnership, or unincorporated association.

- A person whose application bore the signature of a person described above.

House Bill 5129 (H-2)

Licensee Sanctions

An applicant or licensee under Article 17a would be subject to the penalties of Section 602 of the Occupational Code for one or more of the following:

- An intentional misrepresentation or omission of any material fact required to be filed pursuant to Article 17a.
- A transfer of a license or a change of location in violation of House Bill 5126.
- Failure to comply with House Bill 5130 or 5131.
- A conviction, in Michigan or any other state or jurisdiction, of an applicant or licensee for a crime, including conspiracy, involving lewdness, prostitution, pandering or promoting prostitution, sexual assault or assault with intent to commit CSC, sexual misconduct, indecent exposure, incest, rape or CSC, or sodomy, or registration of an applicant or licensee as a sex offender.
- A conviction, in Michigan or any other state or jurisdiction, of a partner, director, officer, principal owner, manager, procurer, or employee of a licensee for a crime, including conspiracy, occurring on the licensed premises, involving lewdness, prostitution, pandering or promoting prostitution, sexual assault or assault with intent to commit CSC, sexual misconduct, indecent exposure, incest, rape or CSC, or sodomy, or his or her registration as a sex offender.
- A conviction, in Michigan or any other state or jurisdiction, of a partner, director, officer, principal owner, manager, procurer, or employee of a licensee for a crime, including those listed above, not occurring on the licensed premises, if the offender, at the time of the offense, were off the premises at the request or direction or pursuant to the authority of the licensee for the purpose of furthering the business of the licensee, or his or her registration as a sex offender in Michigan or any other state or jurisdiction.

A person holding a license for the operation of a massage establishment also would be subject to the penalties of Section 602 if convicted of an offense described in House Bill 5130. (Section 602 lists sanctions for a person or institution that violates a section of the Occupational Code or a rule or order promulgated or issued under the Code. The section requires the assessment of one or more penalties,

including limitations on a license or certificate of registration for a regulated occupation; suspension of licensure or registration; denial of a license, registration, or renewal; revocation of a license or registration; a civil fine of up to \$10,000; censure; probation; or restitution.)

A person who filed any information under Article 17a could not intentionally misrepresent or omit any material fact required to be filed under the proposed Article. In addition to any penalties assessed under Article 6 of the Occupational Code, a person who violated this provision would be guilty of a misdemeanor punishable by a maximum fine of \$1,000, up to 30 days' imprisonment, or both. For purposes of this provision, a fact would be considered material if it could have affected the DCIS's decision to grant or deny an application for licensure.

House Bill 5130 (H-2)

A massage establishment could not do either of the following:

- Permit a massagist in its employ to treat a patron while the pubic area, buttocks, or female breasts of either the massagist or patron were not fully covered.
- Permit a massagist in its employ to treat the genitals of a patron.

Also, a massage establishment could not be located on the premises or have an adjoining door to an establishment that sold alcoholic beverages.

In addition to any penalties imposed under Article 6 of the Occupational Code, a violation of these provisions would be a misdemeanor punishable by a \$1,000 fine, up to six months' imprisonment, or both.

A massage establishment would have to maintain on the premises and keep current a record of all massagists in its employ and a record of all massagists who had been employed after the effective date of Article 17a. A record of a massagist required by this provision would have to be maintained for the period of his or her employment and at least one year after that. A record would be subject to inspection on demand by any peace officer or by the DCIS or its Director. In addition to any penalties assessed under Article 6 of the Occupational Code, a violation of these provisions would be a misdemeanor punishable by a maximum fine of \$1,000, up to six months' imprisonment, or both.

House Bill 5131

Notification of Change of Information

An adult entertainment establishment would have to notify the DCIS, in writing within 10 days, if any information it had provided in its application had changed. If the change were to disclose the identity of a natural person about whom the establishment was required to provide information in its application, the establishment would have to include in the notice the person's full name, including nicknames or aliases; residential address; place of employment, including address and telephone number; date of birth; Social Security number; driver's license number; and a photograph taken within 30 days of application. In addition to any penalties assessed under Article 6 of the Code, a violation of this provision would be misdemeanor punishable by a \$1,000 fine.

Scope of Article 17a

Article 17a would apply to all businesses and enterprises subject to the Article, whether in existence before, on, or after the Article's effective date. Issuance of a license under Article 17a would not be a defense to a civil or criminal action other than an action for a licensing violation under that Article.

DCH Inspection

Upon reasonable notice, the premises at which the business of an adult entertainment establishment was carried on would be subject to periodic inspection by the DCH for the prevention of the spread of communicable diseases and to inspection by law enforcement officials.

House Bill 5132 (H-4)

Hours of Operation

The bill would prohibit an adult entertainment establishment from exhibiting, providing, or furnishing adult entertainment to a patron or customer before 10:00 a.m., Monday through Saturday, or after 2:00 a.m., Tuesday through Sunday, or on a legal holiday. An adult entertainment establishment could not exhibit, provide, or furnish adult entertainment to a patron or customer between the hours of 2:00 a.m. and 12:00 midnight on a Sunday or a legal holiday.

Adult Entertainment Employees

Everyone engaged by an adult entertainment establishment to provide live adult entertainment or massage to its customers or patrons would have to be engaged as an employee of the establishment. An adult entertainment establishment could not engage independent contractors to provide live adult entertainment or massage to its customers or

patrons.

Customer or Patron Age Limit

An owner, manager, operator, procurer, or employee of an adult entertainment establishment could not knowingly admit or allow to remain on the premises of the establishment an individual who was under 18 years of age. In addition to any penalties assessed under Article 6 of the Occupational Code, a violation of this provision would be a misdemeanor, punishable by a \$1,000 fine for the first offense or a \$5,000 fine for a subsequent offense. It would be an affirmative defense to a prosecution that the underage person presented identification to the accused, if the identification contained a photograph of the individual and other information that would lead a reasonable person to believe that the person presenting identification was 18 years of age or older.

House Bill 5133 (H-1)

Definitions

As used in the bill, unless the context clearly indicated a different meaning, terms would be defined as described below.

“Booth, stall, or partitioned portion of a room or an individual room” would mean an enclosure specifically offered to a person for a fee or as an incident to performing high-risk sexual conduct or an enclosure that was part of a business operated on the premises that offered motion pictures, videocassettes, or other video reproductions, or live entertainment to be viewed within the enclosure, including an enclosure in which motion pictures, videocassettes, or other video reproductions, or live entertainment was dispensed for a fee. The phrase would not include an enclosure used as a private office by an owner, manager, or other person employed on the premises in the course of his or her employment, if the enclosure were not held out for use or hire to the public for the purpose of viewing motion pictures, videocassettes, or other video reproductions, or live entertainment for a fee and were not open to persons other than employees.

“Door, curtain, or portal partition” would mean a full, complete, nontransparent closure device constructed so that a person outside an enclosure could not see or view activity taking place within the enclosure.

“Facility” would mean all or a distinct portion of a commercial building, structure, or other premises. “Facility” would not include a building, structure, or other premises lawfully operating as a hotel, motel, apartment complex, condominium, or rooming house.

“Hazardous site” would mean a premises that was a site of high-risk sexual conduct. “High-risk sexual conduct” would mean one or more of the following: fellatio, anal intercourse, or vaginal intercourse with a person who engaged in sexual acts for money.

“Open to an adjacent public room so that the area inside is visible to a person in an adjacent room” would mean either the absence of a door, curtain, or portal partition or a door or other device that was made of clear, transparent material such as glass, plexiglass, or other similar material, meeting applicable building code and safety standards and that permitted the activity inside the enclosure to be viewed or seen by a person outside the enclosure.

Prohibitions

The bill would prohibit a person from constructing, using, designing, or operating a facility for the purpose of engaging in or permitting a person to engage in sexual activity that included high-risk sexual conduct.

A person also could not own, operate, manage, rent, lease, or exercise control over a facility that contained a booth, stall, or partitioned portion of a room or an individual room used for the viewing of a motion picture, videocassette, or other video reproduction, or live entertainment, having a door, curtain, or portal partition, unless all of the following were met:

- The facility contained at least one manager's station. (which could not exceed 32 square feet of floor area).
- At least one employee was on duty and situated in each manager's station at all times that a patron was present inside the facility.
- The interior of the facility was configured in such a manner that there was an unobstructed, direct line of sight view from a manager's station of every area of the facility to which any patron was permitted access for any purpose, excluding restrooms.
- No restroom in the facility contained a television or motion picture or videocassette viewing equipment.
- No patron was permitted access to any area of the facility designated as an area in which patrons were not permitted.
- No booth, stall, or partitioned portion of a room or an individual room was occupied by more than one person at any time.
- The facility was equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons were permitted access at an illumination of not less than five foot-candles, as measured at floor level, and this amount of illumination was maintained at all times that a

- patron was present in the facility.
- No holes or openings of any kind existed between booths, stalls, or partitioned portions of a room or individual rooms and the facility was inspected daily to determine if any holes or openings existed.
 - The floor covering in a booth, stall, or partitioned portion of a room or an individual room was nonporous and easy to clean, with no rugs or carpeting.
 - All wall surfaces and ceiling surfaces in a booth, stall, or partitioned portion of a room or an individual room were constructed of or permanently covered by nonporous and easy-to-clean material.
 - No wood, plywood, composition board, or other porous building material was used within 48 inches of the floor of a booth, stall, or partitioned portion of a room or an individual room.

DCH Administration & Enforcement

The Department of Community Health could adopt rules and regulations to facilitate its administration of the bill. In exercising its powers under the bill, the DCH would have to be guided by the most recent instructions, opinions, and guidelines of the Centers for Disease Control of the United States Department of Health and Human Services related to the spread of infectious disease. Any rules or regulations adopted by the DCH related to controlling the spread of sexually related communicable disease would apply to the bill.

In order to ascertain the source of certain infections and reduce the spread of infection, the DCH or any person authorized by the Department could inspect or cause to be inspected, and issue orders regarding, a facility that could be a site of high-risk sexual conduct. If the DCH determined that a hazardous site existed, it could do one or more of the following, as applicable:

- Notify the management, owner, or tenant of the facility that the DCH had reasonable belief that the facility was a hazardous site.
- After giving notice, issue a warning to the management, owner, or tenant of the facility to remedy those items cited or listed in the notice.
- After giving notice and issuing a warning, proceed as described below.

After the DCH issued a notice and warning, the management, owner, or tenant of the facility would have 10 days to request a hearing before a hearing officer appointed by the DCH for a final determination as to whether the facility was a hazardous site. If the management, owner, or tenant did not request a hearing within 10 days, the DCH would have to post a warning on the premises advising the public that

the facility had been declared a hazardous site. The DCH then would have to issue an order to the management, owner, or tenant to take measures to bring the facility into compliance with the bill.

If a facility's management, owner, or tenant requested a hearing, the hearing would have to be held before a DCH-appointed hearing officer within 30 days after the request. After considering all evidence, the hearing officer would have to determine whether the facility was a hazardous site. If the hearing officer so determined, the DCH would have to issue an order and post a warning on the facility advising the public that it had been declared a hazardous site. Thirty days after issuing an order, if the DCH determined that measures to bring the facility into compliance and to prevent high-risk sexual conduct had not been undertaken, the DCH could declare the facility a public nuisance and do one or more of the following:

- Order the abatement of the hazardous site as a public nuisance. The order would have to be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction.
- Secure a court order for the closure of the facility until it was in compliance with the bill.
- Take the steps set forth in Section 2455 of the Public Health Code to avoid, correct, or remove a nuisance. (Section 2455 specifies procedures by which a local health department or the DCH may issue an order to avoid, correct, or remove, at the owner's expense, a building or condition that violates health laws or that the local health officer or director reasonably believes to be a nuisance, unsanitary condition, or cause of illness.)

The management, owner, or tenant could, within 30 days of the DCH order, apply to a court of competent jurisdiction for a civil trial de novo (that is, a new proceeding) of any finding or findings made by the hearing officer and of any charges brought against the management, owner, or tenant.

House Bill 5134 (H-1)

The bill specifies that a private citizen who brought an action to abate a public nuisance that existed at an adult entertainment establishment licensed, or required to be licensed under Article 17a of the Occupational Code, and in whose favor the court rendered an order or judgment, could be awarded a reasonable attorney's fee as part of the costs of maintaining the action.

MCL 722.671 et al. (H.B. 4327)
 Proposed MCL 339.1751 & 339.1752 (H.B. 5124)
 Proposed MCL 338.2226 (H.B. 5125)
 Proposed MCL 339.1753-339.1756 (H.B. 5126)
 Proposed MCL 339.1757-339.1759 (H.B. 5127)
 Proposed MCL 339.1760-339.339.1761 (H.B. 5128)

Proposed MCL 339.1762 & 339.1763 (H.B. 5129)
 Proposed MCL 339.1764 & 339.1765 (H.B. 5130)
 Proposed MCL 339.1766-339.1768 (H.B. 5131)
 Proposed MCL 339.1769 & 339.1770 (H.B. 5132)
 Proposed MCL 333.5208 (H.B. 5133)
 MCL 600.3805 (H.B. 5134)

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bill 4327 (H-4)

The bill would have an indeterminate fiscal impact on local units of governments.

There are no data available to indicate how many people could be convicted of the misdemeanor offense of disseminating, exhibiting, or displaying sexually explicit material to minors under the proposed changes to the existing statute. Local units of government would receive the fine revenue or incur the costs of incarceration for this crime, which carries a penalty of a maximum fine of \$5,000 and/or 90 days in jail.

House Bill 5124 (H-4) - 5132 (H-4)

These bills would require the Department of Consumer and Industry Services to license the approximately 300 adult entertainment establishments in the State. The bills would allow the Department to assess a licensing fee, which could be set at a level to offset any costs these additional responsibilities would impose. According to the Department, the total cost of these bills would be approximately \$4,400,000 and would require an additional 47 FTEs to perform licensing activities and enforce these new regulations.

In addition, the bills would have an indeterminate fiscal impact on local units of government. The criminal penalties for the offenses proposed by the bills are shown in the table below. All of these crimes would be misdemeanor offenses and would be tried at the district court level, which sentences offenders to county jails. Local units of government would incur the costs of incarceration and/or receive the fine revenues. The fiscal impact of these penalties on local units of government is difficult to estimate because there are no available data to project how many people could be convicted of these offenses, and the cost of incarceration varies among the jurisdictions.

Bill	Description	Penalty
5124	Operating without a license	\$10,000 and/or 6 months
5126	Transferring a license	\$500 and/or 6 months
	Operating at a site other than specified in the license	\$500 and/or 6 months
	Operating within 3,000 feet of a residential area, school, church, or child care facility	\$5,000

5127	Not properly displaying the license	\$1,000
5129	Intentionally misrepresenting or omitting information in license application	\$1,000 and/or 3 months
5130	Improper conduct at a massage establishment	\$1,000 and/or 6 months
5131	Not reporting changes to information on a license	\$1,000
5132	Allowing minors into an adult entertainment establishment	\$1,000 for a first offense; \$5,000 for a second or subsequent offense

House Bill 5133 (H-1)

This bill would have an indeterminate impact on Department of Community Health expenditures. Costs would be incurred for the administration and enforcement of this proposal. The cost of this proposal would not be absorbed by existing resources, as the Department does not currently perform any related functions.

The fiscal impact would be influenced by the number of adult entertainment establishments currently operating in the State of Michigan, the number of those establishments that would be in violation of the proposed rules, as well as the scope of the rules and regulations adopted by the Department.

House Bill 5134 (H-1)

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.