

1 "Premises" means the real property:

2 (1) That is owned, rented, or otherwise under the control
3 of a live adult entertainment business as a place of
4 business; and

5 (2) At which the live adult entertainment business employs
6 sexually exploited individuals to provide
7 entertainment to patrons or customers.

8 "Sexually exploited individuals" shall have the same
9 meaning as in section 712-1210.

10 § -2 **Live adult entertainment tax.** (a) There is levied
11 and shall be assessed and collected a live adult entertainment
12 tax of \$ for each patron or customer admitted each day
13 to the premises of a live adult entertainment business.

14 (b) This section does not require any live adult
15 entertainment business to collect the live adult entertainment
16 tax from any patron or customer of the business. A business may
17 determine the manner in which the business derives the money
18 required under this section; provided that the business shall
19 not violate any other law.

20 § -3 **Certificate of registration.** (a) Each person as a
21 condition precedent to engaging or continuing in business as a



1 live adult entertainment business shall register with the
2 director. A person required to so register shall make a one-
3 time payment of \$, upon receipt of which the director
4 shall issue a certificate of registration in such form as the
5 director determines, attesting that the registration has been
6 made. The registration shall not be transferable and shall be
7 valid only for the person in whose name it is issued and for the
8 transaction of business at the place designated therein. The
9 registration, or in lieu thereof, a notice stating where the
10 registration may be inspected and examined, shall at all times
11 be conspicuously displayed at the place for which it is issued.

12 (b) The registration shall be effective until canceled in
13 writing. Any application for the reissuance of a previously
14 canceled registration identification number shall be regarded as
15 a new registration application and shall be subject to the
16 payment of the one-time registration fee in subsection (a). The
17 director may revoke or cancel any certificate of registration
18 issued under this chapter for cause as provided by rule under
19 chapter 91.

20 (c) If the registration fee is paid, the department shall
21 not refuse to issue a registration or revoke or cancel a



1 registration for the exercise of a privilege protected by the
2 First Amendment of the Constitution of the United States, or for
3 the carrying on of interstate or foreign commerce, or for any
4 privilege the exercise of which, under the Constitution and laws
5 of the United States, cannot be restrained on account of
6 nonpayment of taxes, nor shall section -13 be invoked to
7 restrain the exercise of such a privilege, or the carrying on of
8 commerce that is subject to this chapter.

9 (d) Any person who is required to register as a live adult
10 entertainment business who engages or continues in the business
11 without registering in conformity with this chapter, shall be
12 guilty of a misdemeanor. Any officer or director of a
13 corporation who permits, aids, or abets the corporation to
14 engage or continue in business without registering in conformity
15 with this chapter, shall be guilty of a misdemeanor. The
16 penalty for violating this subsection shall be the same as
17 prescribed in section 231-34 for violation of that section.

18 **§ -4 Return and payments; penalties.** (a) On or before
19 the twentieth day of each calendar month, every person taxable
20 under this chapter during the preceding calendar month shall
21 file a sworn return with the director in a form as the director



1 shall prescribe together with a remittance for the amount of the
2 live adult entertainment tax in the form required by section

3 -5. Sections 237-30 and 237-32 shall apply to returns and
4 penalties made under this chapter to the same extent as if the
5 sections were set forth specifically in this section.

6 (b) Notwithstanding subsection (a), the director, for good
7 cause, may permit a person to file the person's return required
8 under this section and make payments thereon:

9 (1) On a quarterly basis during the calendar or fiscal
10 year, the return and payment to be made on or before
11 the twentieth day of the calendar month after the
12 close of each quarter, to wit: for calendar year
13 taxpayers, on or before April 20, July 20, October 20,
14 and January 20 or, for fiscal year taxpayers, on or
15 before the twentieth day of the fourth month, seventh
16 month, and tenth month following the beginning of the
17 fiscal year and on or before the twentieth day of the
18 month following the close of the fiscal year; provided
19 that the director is satisfied that the grant of the
20 permit will not unduly jeopardize the collection of
21 the live adult entertainment taxes due thereon and



1 that the person's total live adult entertainment tax
2 liability for the calendar or fiscal year under this
3 chapter will not exceed \$4,000; or

- 4 (2) On a semiannual basis during the calendar or fiscal
5 year, the return and payment to be made by or before
6 the twentieth day of the calendar month after the
7 close of each six-month period, to wit: for calendar
8 year taxpayers, on July 20 and January 20 or, for
9 fiscal year taxpayers, on or before the twentieth day
10 of the seventh month following the beginning of the
11 fiscal year and on or before the twentieth day of the
12 month following the close of the fiscal year; provided
13 that the director is satisfied that the grant of the
14 permit will not unduly jeopardize the collection of
15 the live adult entertainment taxes due thereon and
16 that the person's total live adult entertainment tax
17 liability for the calendar or fiscal year under this
18 chapter will not exceed \$2,000.

19 The director, for good cause, may permit a person to make
20 monthly payments based on the person's estimated quarterly or
21 semiannual liability; provided that the person files a



1 reconciliation return at the end of each quarter or at the end
2 of each six-month period during the calendar or fiscal year, as
3 provided in this section.

4 (c) If a person filing the return on a quarterly or
5 semiannual basis, as provided in this section, becomes
6 delinquent in either the filing of the return or the payment of
7 the live adult entertainment taxes due thereon, or if the
8 liability of a person, who possesses a permit to file the return
9 and to make payments on a semiannual basis exceeds \$2,000 in
10 live adult entertainment taxes during the calendar year or
11 exceeds \$4,000 in live adult entertainment taxes during the
12 calendar year if making payments on a quarterly basis, or if the
13 director determines that any such quarterly or semiannual filing
14 of return would unduly jeopardize the proper administration of
15 this chapter, including the assessment or collection of the live
16 adult entertainment tax, the director, at any time, may revoke a
17 person's permit, in which case the person then shall be required
18 to file the person's return and make payments thereon as
19 provided in subsection (a).

20 (d) Section 232-2 does not apply to a monthly, quarterly,
21 or semiannual return.



1 **§ -5 Remittances.** All remittances of the live adult
2 entertainment tax imposed under this chapter shall be made by
3 cash, bank draft, cashier's check, money order, or certificate
4 of deposit to the office of the taxation district to which the
5 return was transmitted. The department shall deposit the moneys
6 into the state treasury to the credit of the human trafficking
7 victim services fund established under section 706-650.5.

8 **§ -6 Annual return.** On or before the twentieth day of
9 the fourth month following the close of the taxable year, every
10 person who has become liable for the payment of the live adult
11 entertainment tax during the preceding tax year shall file a
12 return summarizing the person's liability under this chapter for
13 the year, in a form as the director prescribes. The person
14 shall transmit with the return a remittance covering the residue
15 of the live adult entertainment tax chargeable to the person, if
16 any, to the office of the appropriate state district tax
17 assessor designated in section -7. The return shall be
18 signed by the person, if made by an individual, or by the
19 president, vice-president, secretary, or treasurer of a
20 corporation, if made on behalf of a corporation. If made on
21 behalf of a partnership, firm, society, unincorporated



1 association, group, hui, joint adventure, joint stock company,
2 corporation, trust estate, decedent's estate, trust, or other
3 entity, any individual delegated by the entity shall sign the
4 same on behalf of the person. If for any reason it is not
5 practicable for the individual person to sign the return, it may
6 be done by any duly authorized agent. The department, for good
7 cause shown, may extend the time for making the return on the
8 application of any person and grant such reasonable additional
9 time within which to make the return as the department may deem
10 advisable.

11 Section 232-2 shall apply to the annual return, but not to
12 a monthly, quarterly, or semiannual return.

13 **§ -7 Filing of returns.** All monthly, quarterly,
14 semiannual, and annual returns shall be transmitted to the
15 office of the taxation district in which the person's place of
16 business is situated or to the office of the first taxation
17 district in Honolulu.

18 **§ -8 Assessment of live adult entertainment tax upon**
19 **failure to make return; limitation period; exceptions; extension**
20 **by agreement.** (a) If any person fails to make a return as
21 required by this chapter, the director shall make an estimate of



1 the live adult entertainment tax liability of the person from
2 any information the director obtains, and according to the
3 estimate so made, assess the live adult entertainment taxes,
4 interest, and penalty due the State from the person, give notice
5 of the assessment to the person, and make demand upon the person
6 for payment. The assessment shall be presumed to be correct
7 until and unless, upon an appeal duly taken as provided in
8 section -10, the contrary shall be clearly proved by the
9 person assessed, and the burden of proof upon the appeal shall
10 be upon the person assessed to disprove the correctness of
11 assessment.

12 (b) After a return is filed under this chapter the
13 director shall cause the return to be examined, and may make
14 further audits or investigation as the director considers
15 necessary. If the director determines that there is a
16 deficiency with respect to the payment of the live adult
17 entertainment tax due under this chapter, the director shall
18 assess the live adult entertainment taxes, interest, and penalty
19 due the State, give notice of the assessment to the persons
20 liable, and make demand upon the persons for payment.



1 (c) Except as otherwise provided by this section, the
2 amount of live adult entertainment taxes imposed by this chapter
3 shall be assessed or levied within three years after the annual
4 return was filed, or within three years of the due date
5 prescribed for the filing of the return, whichever is later, and
6 no proceeding in court without assessment for the collection of
7 any live adult entertainment taxes shall begin after the
8 expiration of the period. Where the assessment of the tax
9 imposed by this chapter has been made within the period of
10 limitation applicable thereto, the tax may be collected by levy
11 or by a proceeding in court under chapter 231; provided that the
12 levy is made or the proceeding was begun within fifteen years
13 after the assessment of the tax.

14 Notwithstanding any other provision to the contrary in this
15 section, the limitation on collection after assessment in this
16 section shall be suspended for the period:

- 17 (1) The taxpayer agrees to suspend the period;
- 18 (2) The assets of the taxpayer are in control or custody
19 of a court in any proceeding before any court of the
20 United States or any state, and for six months
21 thereafter;



1 (3) An offer in compromise under section 231-3(10) is
2 pending; and

3 (4) During which the taxpayer is outside the State if the
4 period of absence is for a continuous period of at
5 least six months; provided that if at the time of the
6 taxpayer's return to the State the period of
7 limitations on collection after assessment would
8 expire before the expiration of six months from the
9 date of the taxpayer's return, the period shall not
10 expire before the expiration of the six months.

11 (d) In the case of a false or fraudulent return with
12 intent to evade the live adult entertainment tax, or of a
13 failure to file the annual return, the live adult entertainment
14 tax may be assessed or levied at any time; provided that the
15 burden of proof with respect to the issues of falsity or fraud
16 and intent to evade tax shall be upon the State.

17 (e) Where, before the expiration of the period prescribed
18 in subsection (c), both the department and the person have
19 consented in writing to the assessment or levy of the live adult
20 entertainment tax after the date fixed by subsection (c), the
21 live adult entertainment tax may be assessed or levied at any



1 time prior to the expiration of the period agreed upon. The
2 period so agreed upon may be extended by subsequent agreements
3 in writing made before the expiration of the period previously
4 agreed upon.

5 **§ -9 Overpayment; refunds.** Upon application by a
6 person, if the director determines that any live adult
7 entertainment tax, interest, or penalty has been paid more than
8 once, or has been erroneously or illegally collected or
9 computed, the live adult entertainment tax, interest, or penalty
10 shall be credited by the director on any live adult
11 entertainment tax then due from the person under this chapter.
12 The director shall refund the balance to the person or the
13 person's successors, administrators, executors, or assigns in
14 accordance with section 231-23(d). No credit or refund shall be
15 allowed for any live adult entertainment tax imposed by this
16 chapter, unless a claim for the credit or refund is filed as
17 follows:

- 18 (1) If an annual return is timely filed, or is filed
19 within three years after the date prescribed for
20 filing the annual return, then the credit or refund
21 shall be claimed within three years after the date the



1 annual return was filed or the date prescribed for
2 filing the annual return, whichever is later.

3 (2) If an annual return is not filed, or is filed more
4 than three years after the date prescribed for filing
5 the annual return, a claim for credit or refund shall
6 be filed within:

7 (A) Three years after the payment of the tax; or

8 (B) Three years after the date prescribed for the
9 filing of the annual return,

10 whichever is later.

11 Paragraphs (1) and (2) are mutually exclusive. The preceding
12 limitation shall not apply to a credit or refund pursuant to an
13 appeal provided for in section -10.

14 As to all tax payments for which a refund or credit is not
15 authorized by this section (including, without prejudice to the
16 generality of the foregoing, cases of unconstitutionality), the
17 remedies provided by appeal or by section 40-35 are exclusive.

18 **§ -10 Appeals.** Any person aggrieved by any assessment
19 of the live adult entertainment tax for any month or any year
20 may appeal from the assessment in the manner and within the time



1 and in all other respects as provided in the case of income tax
2 appeals by section 235-114.

3 **§ -11 Records to be kept; examination.** Every person
4 shall keep in the English language within the State, and
5 preserve for a period of three years, suitable records relating
6 to the live adult entertainment tax levied and assessed under
7 this chapter, and any other books, records of account, and
8 invoices as may be required by the department, and all books,
9 records, and invoices shall be open for examination at any time
10 by the department or the Multistate Tax Commission pursuant to
11 chapter 255, or the authorized representative thereof.

12 **§ -12 Disclosure of returns unlawful; destruction of**
13 **returns.** (a) All tax returns and return information required
14 to be filed under this chapter, and the report of any
15 investigation of the return or of the subject matter of the
16 return, shall be confidential. It shall be unlawful for any
17 person or any officer or employee of the State, including the
18 auditor or the auditor's agent with regard to tax return
19 information obtained pursuant to section 23-5(a), to
20 intentionally make known information imparted by any tax return
21 or return information filed pursuant to this chapter, or any



1 report of any investigation of the return or of the subject
2 matter of the return, or to wilfully permit any tax return,
3 return information, or report so made, or any copy thereof, to
4 be seen or examined by any person; provided that for live adult
5 entertainment tax purposes only, persons with a material
6 interest in the return, return information, or report may
7 examine them. Unless otherwise provided by law, persons with a
8 material interest in the return, return information, or report
9 shall include:

- 10 (1) Trustees;
- 11 (2) Partners;
- 12 (3) Persons named in a board resolution or a one per cent
13 shareholder in the case of a corporate return;
- 14 (4) The person authorized to act for a corporation in
15 dissolution;
- 16 (5) The shareholder of an S corporation;
- 17 (6) The personal representative, trustee, heir, or
18 beneficiary of an estate or trust in the case of the
19 estate's or decedent's return;
- 20 (7) The committee, trustee, or guardian of any person in
21 paragraphs (1) through (6) who is incompetent;



- 1 (8) The trustee in bankruptcy or receiver, and the
- 2 attorney-in-fact of any person in paragraphs (1)
- 3 through (7);
- 4 (9) Persons duly authorized by the State in connection
- 5 with their official duties;
- 6 (10) Any duly accredited tax official of the United States
- 7 or of any state or territory;
- 8 (11) The Multistate Tax Commission or its authorized
- 9 representative; and
- 10 (12) Members of a limited liability company.

11 Any violation of this subsection shall be a class C felony.

12 Nothing in this subsection shall prohibit the publication of

13 statistics that are classified to prevent the identification of

14 particular reports or returns and the items of the reports or

15 returns.

16 (b) The department may destroy the monthly, quarterly, or

17 semiannual returns filed pursuant to section -4, or any of

18 them, upon the expiration of three years after the end of the

19 calendar or fiscal year in which the live adult entertainment

20 taxes so returned accrued.



1 **§ -13 Collection by suit; injunction.** The department
2 may collect live adult entertainment taxes due and unpaid under
3 this chapter, together with all accrued penalties, by action in
4 assumpsit or other appropriate proceedings in the circuit court
5 of the judicial circuit in which the live adult entertainment
6 taxes arose. After delinquency has continued for sixty days, or
7 if any person lawfully required so to do under this chapter
8 fails to apply for and secure a certificate as provided by this
9 chapter for a period of sixty days after the first date when the
10 person was required under this chapter to secure the
11 certificate, the department may proceed in the circuit court of
12 the judicial circuit in which the live adult entertainment
13 business' premises is located, to obtain an injunction
14 restraining further business operations until full payment has
15 been made of all live adult entertainment taxes, penalties, and
16 interest due under this chapter, or until the certificate is
17 secured, or both, as the circumstances of the case requires.

18 **§ -14 Application of live adult entertainment tax.** The
19 live adult entertainment tax imposed by this chapter shall be in
20 addition to any other taxes imposed by any other laws of the
21 State, except as otherwise specifically provided in this



1 chapter; provided that if it be held by any court of competent
 2 jurisdiction that the live adult entertainment tax imposed by
 3 this chapter may not legally be imposed in addition to any other
 4 tax or taxes imposed by any other law or laws with respect to
 5 the same premises or the use thereof, then this chapter shall be
 6 deemed not to apply to the premises and the use thereof under
 7 the specific circumstances, but the other laws shall be given
 8 full effect with respect to the premises and use.

9 **§ -15 Administration and enforcement; rules.** (a) The
 10 director shall administer and enforce this chapter in respect
 11 to:

- 12 (1) The examination of books and records of live adult
 13 entertainment businesses;
- 14 (2) Procedure and powers upon failure or refusal by a
 15 person to make a return or proper return; and
- 16 (3) The general administration of this chapter.

17 All of the provisions of chapter 237 not inconsistent with this
 18 chapter and that may appropriately be applied to the taxes,
 19 persons, circumstances, and situations involved in this chapter,
 20 including (without prejudice to the generality of the foregoing)
 21 provisions as to penalties and interest, and provisions granting



1 administrative powers to the department, and provisions for the
2 assessment, levy, and collection of taxes, shall be applicable
3 to the live adult entertainment tax imposed by this chapter, and
4 to the assessment, levy, and collection thereof.

5 (b) The director may adopt, amend, or repeal rules under
6 chapter 91 to carry out this chapter."

7 SECTION 2. Section 706-650.5, Hawaii Revised Statutes, is
8 amended by amending subsection (4) to read as follows:

9 "(4) All [~~fees~~]:

10 (a) Fees paid [~~and interest accrued on funds collected~~]
11 pursuant to this section; and

12 (b) Moneys collected pursuant to chapter from the live
13 adult entertainment tax,

14 shall be deposited into the human trafficking victim services
15 fund. All interest earned or accrued on moneys deposited into
16 the human trafficking victim services fund shall become part of
17 the fund."

18 SECTION 3. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



H.B. NO. 646

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act, upon its approval, shall apply to
4 taxable years beginning after December 31, 2019; provided that
5 section 2 shall take effect on January 1, 2020.
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INTRODUCED BY:

[Handwritten signatures]

~~Shannon C. Be...~~

~~Richard Long~~

~~Calvin K. Ray~~

~~Samuel S. King~~

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JAN 18 2019



H.B. NO. 646

Report Title:

Taxation; Live Adult Entertainment

Description:

Imposes a per person, per day admission tax on certain live adult entertainment businesses. Imposes filing, reporting, and recordkeeping requirements. Deposits moneys collected from the tax into the human trafficking victim services fund.

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