

ASSEMBLY BILL

No. 726

**Introduced by Assembly Member Baugh
(Principal coauthor: Assembly Member Caldera)
(Coauthors: Assembly Members Ackerman, Baldwin,
Bordonaro, Bowler, Campbell, Margett, Miller, Morrissey,
Morrow, Oller, Runner, Thompson, and Woods)**

February 26, 1997

An act to amend Sections 318.5 and 318.6 of the Penal Code, relating to adult entertainment.

LEGISLATIVE COUNSEL'S DIGEST

AB 726, as introduced, Baugh. Sexually oriented businesses: local regulation.

Under existing law, the legislative body of any county or city may regulate, pursuant to a content neutral zoning ordinance, the time, place, and manner of operation of sexually oriented businesses, as specified. Existing law separately provides that nothing in specified provisions shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a county or city, if the ordinance directly regulates the exposure of the genitals or buttocks of or the breasts of any person who acts as a waiter, waitress, or entertainer, as specified.

Existing law further provides that nothing in the Penal Code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance relates to any live acts, demonstrations, or exhibitions occurring in public places, places open to the

public, or places open to public view and involve the exposure of specified body parts and if the ordinance prohibits an act or acts that are not expressly authorized or prohibited by existing law. Existing law exempts from these provisions any theater, concert hall, or similar establishment which is primarily devoted to theatrical performances.

This bill would delete the exemption for theaters, concert halls, and similar establishments. The bill would further provide that nothing in the Penal Code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance prohibits the presentation of live, nude performances at any adult or sexually oriented business, as defined, or if that ordinance prohibits any patron from directly paying or giving any gratuity to any dancer or entertainer, or prohibits any dancer or entertainer from soliciting any pay or gratuity from any patron, in any adult or sexually oriented business or similar establishment. The bill would declare that its provisions shall not be interpreted to require the adoption of any ordinance, but is instead intended to be declaratory of existing law, and that it shall not be construed to preempt the legislative body of any city or county from regulating an adult or sexually oriented business, or similar establishment in the manner, and to the extent permitted by, the United States Constitution and the California Constitution.

This bill would make findings and declarations relating to the regulation of sexually oriented businesses, as defined, and would provide that, notwithstanding any other provision of law, any city, county, or city and county may prohibit live nude performances in adult or sexually oriented businesses, consistent with the legislative body's authority to regulate these businesses to the extent permitted by the United States and California Constitutions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) (1) The Legislature finds and
2 declares that the presentation of live nude entertainment



1 within adult or sexually oriented businesses creates
2 undesirable secondary effects including, but not limited
3 to, an increase in criminal activities such as prostitution
4 and drug dealing in the vicinity of the property on which
5 the entertainment is being provided.

6 (2) The Legislature acknowledges that in *Barnes v.*
7 *Glen Theatre, Inc.* (1991) 501 U.S. 560, 115 L. Ed. 2d 504,
8 1115 Ct. 2456, the United States Supreme Court upheld as
9 constitutional a prohibition against live nude
10 performances occurring within adult entertainment or
11 sexually oriented businesses as a means to reduce or
12 eliminate undesirable secondary effects. The Legislature
13 therefore finds and declares that cities, counties, and
14 cities and counties within California may, by ordinance,
15 prohibit live nude entertainment within adult or sexually
16 oriented businesses. For purposes of this section, an
17 “adult or sexually oriented business” includes any
18 establishment that regularly features live performances
19 which are distinguished or characterized by an emphasis
20 on the display of specified anatomical areas or specified
21 sexual activities.

22 (3) The Legislature further finds that the solicitation
23 or payment of money or gratuities by and between
24 patrons and entertainers in sexually oriented businesses
25 is an inducement to, and often results in, disorderly
26 conduct, including, but not limited to, lewd or dissolute
27 conduct, acts of prostitution, or illicit dealing of controlled
28 substances.

29 (4) The Legislature therefore finds and declares that
30 cities, counties, and cities and counties within California
31 may, by ordinance, prohibit any patron from directly
32 paying or giving any gratuity to any dancer or
33 entertainer, or any dancer or entertainer from soliciting
34 any pay or gratuity from any patron in any adult or
35 sexually oriented business.

36 (b) (1) Notwithstanding any other provision of law,
37 any city, county, or city and county may adopt an
38 ordinance or ordinances prohibiting the presentation of
39 live nude performances at any adult or sexually oriented
40 business. This section shall not be construed to require the



1 adoption of any ordinance, but is instead intended to be
 2 declaratory of existing law authorizing cities and counties
 3 to adopt these ordinances.

4 (2) This section shall not be construed to preempt the
 5 legislative body of any city or county from regulating
 6 adult or sexually oriented businesses or similar
 7 establishments in the manner, and to the extent
 8 permitted by the United States Constitution and the
 9 California Constitution.

10 (c) For purposes of this section, an “adult or sexually
 11 oriented business” includes any establishment that
 12 regularly features live performances which are
 13 distinguished or characterized by an emphasis on the
 14 exposure of the genitals or buttocks of any person or the
 15 breasts of any female person, or sexual activities that
 16 involve the exposure of the genitals or buttocks of any
 17 person or the breasts of any female person.

18 SEC. 2. Section 318.5 of the Penal Code is amended to
 19 read:

20 318.5. Nothing in this code shall invalidate an
 21 ordinance of, or be construed to prohibit the adoption of
 22 an ordinance by, a county or city, if ~~such~~ *that* ordinance
 23 directly regulates the exposure of the genitals or buttocks
 24 of *any person*, or the breasts of any *female* person, who
 25 acts as a waiter, waitress, or entertainer, whether or not
 26 the owner of the establishment in which the activity is
 27 performed employs or pays any compensation to ~~such~~
 28 *that* person to perform ~~such~~ *the* activity, in an
 29 establishment which serves food, beverages, or food and
 30 beverages, including, but not limited to, alcoholic
 31 beverages, for consumption on the premises of such
 32 establishment.

33 ~~The provisions of this section shall not apply to a~~
 34 ~~theater, concert hall, or similar establishment which is~~
 35 ~~primarily devoted to theatrical performances~~ *adult or*
 36 *sexually oriented business. For purposes of this section, an*
 37 *“adult or sexually oriented business” includes any*
 38 *establishment that regularly features live performances*
 39 *which are distinguished or characterized by an emphasis*
 40 *on the exposure of the genitals or buttocks of any person,*



1 *or the breasts of any female person, or specified sexual*
2 *activities that involve the exposure of the genitals or*
3 *buttocks of any person, or the breasts of any female*
4 *person.*

5 This section shall be known and may be cited as the
6 “Quimby-Walsh Act.”

7 SEC. 3. Section 318.6 of the Penal Code is amended to
8 read:

9 318.6. (a) Nothing in this code shall invalidate an
10 ordinance of, or be construed to prohibit the adoption of
11 an ordinance by, a city or county, if ~~such~~ that ordinance
12 relates to any live acts, demonstrations, or exhibitions
13 ~~which occur in public places, places open to the public,~~
14 ~~or places open to public view occurring within adult or~~
15 ~~sexually oriented businesses~~ and involve the exposure of
16 the ~~private parts~~ *genitals* or buttocks of any participant or
17 the breasts of any female participant, and if ~~such~~ that
18 ordinance prohibits an act or acts which are not expressly
19 authorized or prohibited by this code.

20 ~~The provisions of this section shall not apply to a~~
21 ~~theater, concert hall~~

22 (b) *Nothing in this code shall invalidate an ordinance*
23 *of, or be construed to prohibit the adoption of an*
24 *ordinance by, a city or county, if that ordinance prohibits*
25 *the presentation of live nude performances at any adult*
26 *or sexually oriented business located within the*
27 *jurisdiction of the local agency. This section shall not be*
28 *interpreted to require the adoption of any ordinance, but*
29 *is instead intended to be declaratory of existing law*
30 *authorizing the adoption of these ordinances by cities and*
31 *counties.*

32 (c) *Nothing in this code shall invalidate an ordinance*
33 *of, or be construed to prohibit the adoption of an*
34 *ordinance by, a city or county, if that ordinance prohibits*
35 *any patron from directly paying or giving any gratuity to*
36 *any dancer or entertainer, or prohibits any dancer or*
37 *entertainer from soliciting any pay or gratuity from any*
38 *patron, in any adult or sexually oriented business or*
39 *similar establishment.*



1 (d) For purposes of this section, an “adult or sexually
2 oriented business” includes any establishment that
3 regularly features live performances which are
4 distinguished or characterized by an emphasis on the
5 exposure of the genitals or buttocks of any person, or the
6 breasts of any female person or sexual activities that
7 involve the exposure of the genitals or buttocks of any
8 person, or the breasts of any female person.

9 (e) This section shall not be construed to preempt the
10 legislative body of any city or county from regulating an
11 adult or sexually oriented business, or similar
12 establishment ~~which is primarily devoted to theatrical~~
13 ~~performances~~, in the manner and to the extent permitted
14 by the United States Constitution and the California
15 Constitution.

