

AMENDED IN ASSEMBLY JUNE 27, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1551

Introduced by Assembly Member Charles Calderon

February 23, 2007

An act to amend Sections 6011 and 6012 of, and to add Part 14.5 (commencing with Section 33001) and Part 14.7 (commencing with Section 33100) to Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1551, as amended, Charles Calderon. ~~Sales tax:~~ *Taxation:* Adult Entertainment Venue Impact Fund.

The Sales and Use Tax Law imposes a tax on the sale of or the storage, use, or other consumption of, tangible personal property in this state at specified rates.

This bill would, in addition, impose a tax on the ~~sale of, or the storage, use, or other consumption of, tangible personal property sold by gross receipts, as defined, of~~ an adult entertainment venue, as defined, in this state at a rate of ~~_____~~% 8%. The tax would generally be collected, administered, and enforced in the same manner as the taxes imposed under the Sales and Use Tax Law. This bill would create the Adult Entertainment Venue Impact Fund and ~~require~~ *express the intent of the Legislature* that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the fund. This bill would provide that moneys in the fund, upon appropriation by the Legislature, be used to ameliorate the secondary

effects of adult entertainment venues, as provided. This bill makes findings and declarations with regard to adult entertainment venues and the imposition of this tax.

Existing law imposes various taxes with respect to the sale, use, or distribution of various products sold in this state.

This bill would also impose a tax, on and after January 1, 2008, at the rate of 8% on the total gross charges, as defined, incurred by a purchaser for the pay-per-view viewing of adult entertainment movies, as provided. This bill would express the intent of the Legislature that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the Adult Entertainment Venue Impact Fund. This bill would provide that moneys in the fund, upon appropriation by the Legislature, be used to ameliorate the secondary effects of nudity and sexually explicit conduct in public places and unprotected sex. This bill makes findings and declarations with regard to the imposition of this tax and the negative secondary effects of nudity and sexually explicit conduct in public places and unprotected sex.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

- 1 SECTION 1. Section 6011 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 6011. (a) "Sales price" means the total amount for which
- 4 tangible personal property is sold or leased or rented, as the case
- 5 may be, valued in money, whether paid in money or otherwise,
- 6 without any deduction on account of any of the following:
- 7 (1) The cost of the property sold.
- 8 (2) The cost of materials used, labor or service cost, interest
- 9 charged, losses, or any other expenses.
- 10 (3) The cost of transportation of the property, except as excluded
- 11 by other provisions of this section.
- 12 (b) The total amount for which the property is sold or leased or
- 13 rented includes all of the following:

- 1 (1) Any services that are a part of the sale.
- 2 (2) Any amount for which credit is given to the purchaser by
3 the seller.
- 4 (3) The amount of any tax imposed by the United States upon
5 producers and importers of gasoline and the amount of any tax
6 imposed pursuant to Part 2 (commencing with Section 7301) of
7 this division.
- 8 (c) "Sales price" does not include any of the following:
 - 9 (1) Cash discounts allowed and taken on sales.
 - 10 (2) The amount charged for property returned by customers
11 when that entire amount is refunded either in cash or credit, but
12 this exclusion shall not apply in any instance when the customer,
13 in order to obtain the refund, is required to purchase other property
14 at a price greater than the amount charged for the property that is
15 returned. For the purpose of this section, refund or credit of the
16 entire amount shall be deemed to be given when the purchase price
17 less rehandling and restocking costs are refunded or credited to
18 the customer. The amount withheld for rehandling and restocking
19 costs may be a percentage of the sales price determined by the
20 average cost of rehandling and restocking returned merchandise
21 during the previous accounting cycle.
 - 22 (3) The amount charged for labor or services rendered in
23 installing or applying the property sold.
 - 24 (4) (A) The amount of any tax (not including, however, any
25 manufacturers' or importers' excise tax, except as provided in
26 subparagraph (B)) imposed by the United States upon or with
27 respect to retail sales whether imposed upon the retailer or the
28 consumer.
 - 29 (B) The amount of manufacturers' or importers' excise tax
30 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
31 Code for which the purchaser certifies that he or she is entitled to
32 either a direct refund or credit against his or her income tax for
33 the federal excise tax paid or for which the purchaser issues a
34 certificate pursuant to Section 6245.5.
 - 35 (5) The amount of any tax imposed by any city, county, city
36 and county, or rapid transit district within the State of California
37 upon or with respect to retail sales of tangible personal property,
38 measured by a stated percentage of sales price or gross receipts,
39 whether imposed upon the retailer or the consumer.

1 (6) The amount of any tax imposed by any city, county, city
2 and county, or rapid transit district within the State of California
3 with respect to the storage, use or other consumption in that city,
4 county, city and county, or rapid transit district of tangible personal
5 property measured by a stated percentage of sales price or purchase
6 price, whether the tax is imposed upon the retailer or the consumer.

7 (7) Separately stated charges for transportation from the
8 retailer's place of business or other point from which shipment is
9 made directly to the purchaser, but the exclusion shall not exceed
10 a reasonable charge for transportation by facilities of the retailer
11 or the cost to the retailer of transportation by other than facilities
12 of the retailer. However, if the transportation is by facilities of the
13 retailer, or the property is sold for a delivered price, this exclusion
14 shall be applicable solely with respect to transportation which
15 occurs after the purchase of the property is made.

16 (8) Charges for transporting landfill from an excavation site to
17 a site specified by the purchaser, either if the charge is separately
18 stated and does not exceed a reasonable charge or if the entire
19 consideration consists of payment for transportation.

20 (9) The amount of any motor vehicle, mobilehome, or
21 commercial coach fee or tax imposed by and paid the State of
22 California that has been added to or is measured by a stated
23 percentage of the sales or purchase price of a motor vehicle,
24 mobilehome, or commercial coach.

25 (10) (A) The amount charged for intangible personal property
26 transferred with tangible personal property in any technology
27 transfer agreement, if the technology transfer agreement separately
28 states a reasonable price for the tangible personal property.

29 (B) If the technology transfer agreement does not separately
30 state a price for the tangible personal property, and the tangible
31 personal property or like tangible personal property has been
32 previously sold or leased, or offered for sale or lease, to third
33 parties at a separate price, the price at which the tangible personal
34 property was sold, leased, or offered to third parties shall be used
35 to establish the retail fair market value of the tangible personal
36 property subject to tax. The remaining amount charged under the
37 technology transfer agreement is for the intangible personal
38 property transferred.

39 (C) If the technology transfer agreement does not separately
40 state a price for the tangible personal property, and the tangible

1 personal property or like tangible personal property has not been
2 previously sold or leased, or offered for sale or lease, to third
3 parties at a separate price, the retail fair market value shall be equal
4 to 200 percent of the cost of materials and labor used to produce
5 the tangible personal property subject to tax. The remaining amount
6 charged under the technology transfer agreement is for the
7 intangible personal property transferred.

8 (D) For purposes of this paragraph, “technology transfer
9 agreement” means any agreement under which a person who holds
10 a patent or copyright interest assigns or licenses to another person
11 the right to make and sell a product or to use a process that is
12 subject to the patent or copyright interest.

13 (11) The amount of any tax imposed upon diesel fuel pursuant
14 to Part 31 (commencing with Section 60001).

15 (12) (A) The amount of tax imposed by any Indian tribe within
16 the State of California with respect to a retail sale of tangible
17 personal property measured by a stated percentage of the sales or
18 purchase price, whether the tax is imposed upon the retailer or the
19 consumer.

20 (B) The exclusion authorized by subparagraph (A) shall only
21 apply to those retailers who are in substantial compliance with this
22 part.

23 (13) The amount of any tax imposed pursuant to Part 14.5
24 (commencing with Section 33001) of this division.

25 SEC. 2. Section 6012 of the Revenue and Taxation Code is
26 amended to read:

27 6012. (a) “Gross receipts” mean the total amount of the sale
28 or lease or rental price, as the case may be, of the retail sales of
29 retailers, valued in money, whether received in money or otherwise,
30 without any deduction on account of any of the following:

31 (1) The cost of the property sold. However, in accordance with
32 any rules and regulations as the board may prescribe, a deduction
33 may be taken if the retailer has purchased property for some other
34 purpose than resale, has reimbursed his or her vendor for tax which
35 the vendor is required to pay to the state or has paid the use tax
36 with respect to the property, and has resold the property prior to
37 making any use of the property other than retention, demonstration,
38 or display while holding it for sale in the regular course of business.
39 If that deduction is taken by the retailer, no refund or credit will

1 be allowed to his or her vendor with respect to the sale of the
2 property.

3 (2) The cost of the materials used, labor or service cost, interest
4 paid, losses, or any other expense.

5 (3) The cost of transportation of the property, except as excluded
6 by other provisions of this section.

7 (4) The amount of any tax imposed by the United States upon
8 producers and importers of gasoline and the amount of any tax
9 imposed pursuant to Part 2 (commencing with Section 7301) of
10 this division.

11 (b) The total amount of the sale or lease or rental price includes
12 all of the following:

13 (1) Any services that are a part of the sale.

14 (2) All receipts, cash, credits and property of any kind.

15 (3) Any amount for which credit is allowed by the seller to the
16 purchaser.

17 (c) "Gross receipts" do not include any of the following:

18 (1) Cash discounts allowed and taken on sales.

19 (2) Sale price of property returned by customers when that entire
20 amount is refunded either in cash or credit, but this exclusion shall
21 not apply in any instance when the customer, in order to obtain
22 the refund, is required to purchase other property at a price greater
23 than the amount charged for the property that is returned. For the
24 purpose of this section, refund or credit of the entire amount shall
25 be deemed to be given when the purchase price less rehandling
26 and restocking costs are refunded or credited to the customer. The
27 amount withheld for rehandling and restocking costs may be a
28 percentage of the sales price determined by the average cost of
29 rehandling and restocking returned merchandise during the
30 previous accounting cycle.

31 (3) The price received for labor or services used in installing or
32 applying the property sold.

33 (4) (A) The amount of any tax (not including, however, any
34 manufacturers' or importers' excise tax, except as provided in
35 subparagraph (B)) imposed by the United States upon or with
36 respect to retail sales whether imposed upon the retailer or the
37 consumer.

38 (B) The amount of manufacturers' or importers' excise tax
39 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
40 Code for which the purchaser certifies that he or she is entitled to

1 either a direct refund or credit against his or her income tax for
2 the federal excise tax paid or for which the purchaser issues a
3 certificate pursuant to Section 6245.5.

4 (5) The amount of any tax imposed by any city, county, city
5 and county, or rapid transit district within the State of California
6 upon or with respect to retail sales of tangible personal property
7 measured by a stated percentage of sales price or gross receipts
8 whether imposed upon the retailer or the consumer.

9 (6) The amount of any tax imposed by any city, county, city
10 and county, or rapid transit district within the State of California
11 with respect to the storage, use or other consumption in that city,
12 county, city and county, or rapid transit district of tangible personal
13 property measured by a stated percentage of sales price or purchase
14 price, whether the tax is imposed upon the retailer or the consumer.

15 (7) Separately stated charges for transportation from the
16 retailer's place of business or other point from which shipment is
17 made directly to the purchaser, but the exclusion shall not exceed
18 a reasonable charge for transportation by facilities of the retailer
19 or the cost to the retailer of transportation by other than facilities
20 of the retailer. However, if the transportation is by facilities of the
21 retailer, or the property is sold for a delivered price, this exclusion
22 shall be applicable solely with respect to transportation which
23 occurs after the sale of the property is made to the purchaser.

24 (8) Charges for transporting landfill from an excavation site to
25 a site specified by the purchaser, either if the charge is separately
26 stated and does not exceed a reasonable charge or if the entire
27 consideration consists of payment for transportation.

28 (9) The amount of any motor vehicle, mobilehome, or
29 commercial coach fee or tax imposed by and paid to the State of
30 California that has been added to or is measured by a stated
31 percentage of the sales or purchase price of a motor vehicle,
32 mobilehome, or commercial coach.

33 (10) (A) The amount charged for intangible personal property
34 transferred with tangible personal property in any technology
35 transfer agreement, if the technology transfer agreement separately
36 states a reasonable price for the tangible personal property.

37 (B) If the technology transfer agreement does not separately
38 state a price for the tangible personal property, and the tangible
39 personal property or like tangible personal property has been
40 previously sold or leased, or offered for sale or lease, to third

1 parties at a separate price, the price at which the tangible personal
2 property was sold, leased, or offered to third parties shall be used
3 to establish the retail fair market value of the tangible personal
4 property subject to tax. The remaining amount charged under the
5 technology transfer agreement is for the intangible personal
6 property transferred.

7 (C) If the technology transfer agreement does not separately
8 state a price for the tangible personal property, and the tangible
9 personal property or like tangible personal property has not been
10 previously sold or leased, or offered for sale or lease, to third
11 parties at a separate price, the retail fair market value shall be equal
12 to 200 percent of the cost of materials and labor used to produce
13 the tangible personal property subject to tax. The remaining amount
14 charged under the technology transfer agreement is for the
15 intangible personal property transferred.

16 (D) For purposes of this paragraph, “technology transfer
17 agreement” means any agreement under which a person who holds
18 a patent or copyright interest assigns or licenses to another person
19 the right to make and sell a product or to use a process that is
20 subject to the patent or copyright interest.

21 (11) The amount of any tax imposed upon diesel fuel pursuant
22 to Part 31 (commencing with Section 60001).

23 (12) (A) The amount of tax imposed by any Indian tribe within
24 the State of California with respect to a retail sale of tangible
25 personal property measured by a stated percentage of the sales or
26 purchase price, whether the tax is imposed upon the retailer or the
27 consumer.

28 (B) The exclusion authorized by subparagraph (A) shall only
29 apply to those retailers who are in substantial compliance with this
30 part.

31 For purposes of the sales tax, if the retailers establish to the
32 satisfaction of the board that the sales tax has been added to the
33 total amount of the sale price and has not been absorbed by them,
34 the total amount of the sale price shall be deemed to be the amount
35 received exclusive of the tax imposed. Section 1656.1 of the Civil
36 Code shall apply in determining whether or not the retailers have
37 absorbed the sales tax.

38 (13) The amount of any tax imposed pursuant to Part 14.5
39 (commencing with Section 33001) of this division.

1 SEC. 3. Part 14.5 (commencing with Section 33001) is added
2 to Division 2 of the Revenue and Taxation Code, to read:

3
4 PART 14.5. ADULT ENTERTAINMENT VENUE TAX
5

6 33001. The Legislature finds and declares all of the following:

7 (a) Adult entertainment venues engender many types of criminal
8 activities.

9 (b) Adult entertainment venues frequently cause adverse effects
10 on local property values and on the public health, safety, and
11 welfare of citizens in their vicinity, and on the character of local
12 neighborhoods.

13 (c) The presence of adult entertainment venues often impacts
14 the character of neighborhoods ~~and, or~~ curtails and prevents
15 development of properties in ~~its general vicinity~~ *their general*
16 *vicinity, or both.*

17 (d) This part is not intended as a de facto prohibition of legally
18 protected forms of expression.

19 (e) This part is intended to represent a balancing of competing
20 interests: ~~addressing criminal activity and protecting neighborhoods~~
21 ~~and development~~ *the need to address criminal activity, protect*
22 *and develop neighborhoods, or both*, through the taxation of adult
23 entertainment venues balanced against the legally protected rights
24 of adult entertainment establishments and *their* patrons.

25 (f) This article is not intended to allow or license any business,
26 establishment, or activity that would otherwise be unlawful under
27 the laws of this state or of the United States.

28 (g) *This article is not intended to affect, or in any way limit, the*
29 *ability of local governments to address the negative secondary*
30 *effects of adult entertainment venues.*

31 33002. Except where the context otherwise requires, the
32 definitions set forth in Part 1 (commencing with Section 6001)
33 govern the construction of this part.

34 33003. For purposes of this part, the following definitions
35 apply:

36 (a) (1) “Adult entertainment venue” means a retail establishment
37 located in California with a substantial purpose that is the sale or
38 rental of adult material, the premises of any facility located in
39 California that provides a public or private viewing of adult
40 material, or the public premises of any facility located in California

1 that offers live sexually explicit conduct that is prohibited to
2 audiences under 18 years of age or 21 years of age, depending on
3 the sale of alcoholic beverages on the premises.

4 (2) “Adult entertainment venue” shall not mean:

5 (A) A retail establishment that is open to the general public and
6 that segregates adult material by restricted access to persons 18
7 years of age or older, so long as the gross receipts from transactions
8 involving adult material do not exceed 5 percent of all gross
9 receipts of the retail establishment.

10 (B) A business whose primary purpose is the provision of live
11 performances that may include the display of complete nudity, so
12 long as the live performance is a legitimate play, opera, ballet, or
13 concert at a concert house, playhouse or theater, museum, or
14 educational institution or facility on whose premises alcoholic
15 beverages may be sold but which derives less than 20 percent of
16 its gross receipts from the sale of alcoholic beverages.

17 (b) “Adult material” includes all of the following:

18 (1) Harmful matter, as defined in Section 313 of the Penal Code.

19 ~~(2) Obscene matter, as defined in Section 311 of the Penal Code.~~

20 ~~(3)~~

21 (2) Live sexually explicit conduct provided at a business
22 establishment.

23 ~~(4)~~

24 (3) Any item that includes sexually explicit conduct or is subject
25 to the requirements of Section 2257 of Title 18 of the United States
26 Code.

27 (c) “Gross receipts” includes receipts, from whatever source,
28 received by the adult entertainment venue, excepting any sales
29 taxes imposed on the transaction.

30 (d) “Sexually explicit conduct” means any of the following
31 actual, but not simulated, conduct:

32 (1) Sexual intercourse, including genital-genital, oral-genital,
33 anal-genital, or oral-anal, whether between persons of the same or
34 opposite sex.

35 ~~(2) Bestiality.~~

36 ~~(3)~~

37 (2) Masturbation.

38 ~~(4)~~

39 (3) Sadistic or masochistic abuse.

40 ~~(5)~~

1 (4) Lascivious exhibition of the genitals or pubic area of any
2 person.

3 33004. ~~(a) In addition to any tax imposed under Chapter 2~~
4 ~~(commencing with Section 6051) of Part 1, for the privilege of~~
5 ~~selling tangible personal property at retail, a tax is hereby imposed~~
6 ~~upon all adult entertainment venues at the rate of _____ 8 percent~~
7 ~~of the gross receipts from the retail sale in this state on or after~~
8 ~~January 1, 2007, of all tangible personal property that is otherwise~~
9 ~~taxable pursuant to Chapter 2 (commencing with Section 6051).~~
10 ~~received in this state on or after January 1, 2008.~~

11 ~~(b) In addition to any tax imposed under Chapter 3 (commencing~~
12 ~~with Section 6201) of Part 1, an excise tax is hereby imposed on~~
13 ~~the storage, use, or other consumption in this state of tangible~~
14 ~~personal property purchased from any adult entertainment venue~~
15 ~~on or after January 1, 2007, for the storage, use, or other~~
16 ~~consumption in this state, at the rate of _____ percent of the sales~~
17 ~~price of the property that is otherwise taxable pursuant to Chapter~~
18 ~~3 (commencing with Section 6201).~~

19 ~~(c) The tax provided for by subdivision (b) shall not be imposed~~
20 ~~upon the storage, use, or other consumption of any tangible~~
21 ~~personal property that was purchased from an adult entertainment~~
22 ~~venue that paid the tax imposed by subdivision (a) with respect to~~
23 ~~the retail sale of the property.~~

24 33005. To the extent feasible or practicable, Section 1556.1 of
25 the Civil Code, the provisions of Chapter 5 (commencing with
26 Section 6451), Chapter 6 (commencing with Section 6701), Chapter
27 7 (commencing with Section 6901), and Chapter 8 (commencing
28 with Section 7051) of Part 1, shall govern determinations,
29 collections of tax, overpayments and refunds, and administration
30 under this part.

31 33006. The board shall enforce the provisions of this part and
32 may prescribe, adopt, and enforce rules and regulations relating
33 to the administration and enforcement of this part. The board may
34 prescribe the extent to which any ruling or regulation shall be
35 applied without retroactive effect.

36 33007. (a) All amounts required to be paid to the state under
37 this part shall be paid to the board in the form of remittances
38 payable to the State Board of Equalization. ~~The~~ *It is the intent of*
39 *the Legislature that the* board shall transmit the payments, less
40 refunds and the board's costs of administration, to the Treasurer

1 to be deposited in the State Treasury to the credit of the Adult
2 Entertainment Impact Fund, which is hereby created.

3 (b) Moneys in the Adult Entertainment Impact Fund shall, upon
4 appropriation by the Legislature, be used to ameliorate the
5 secondary effects of ~~an adult entertainment venue~~ venues.
6 Amelioration of secondary effects includes, but is not limited to:

7 (1) Increased funding to state and local law enforcement to
8 combat any increased criminal activity in the vicinity of adult
9 entertainment venues including, but not limited to, criminal activity
10 like the illegal sale of controlled substances, prostitution, and
11 crimes against women, ~~and crimes against children.~~

12 ~~(2) Programs to address decreased property values in the vicinity~~
13 ~~of adult entertainment venues with the resulting losses in property~~
14 ~~tax revenues.~~

15 ~~(3) Provision of funding to address increased educational costs.~~

16 (2) *Programs to address the negative secondary effects of adult*
17 *entertainment venues on property values.*

18 ~~(4)~~

19 (3) Provision of funding to address related health issues,
20 including the transmission of diseases and mental health treatment.

21 *SEC. 4. Part 14.7 (commencing with Section 33100) is added*
22 *to Division 2 of the Revenue and Taxation Code, to read:*

23

24 *PART 14.7. ADULT ENTERTAINMENT TAX*

25

26 *33100. The Legislature finds and declares that this part is*
27 *intended to address the negative secondary effects of nudity and*
28 *sexually explicit conduct in public places and unprotected sex.*

29 *33101. Except where the context otherwise requires, the*
30 *definitions set forth in Part 1 (commencing with Section 6001)*
31 *govern the construction of this part.*

32 *33102. For purposes of this part, the following definitions*
33 *apply:*

34 (a) *“Adult entertainment movie” means any motion picture that*
35 *is subject to the requirements of Section 2257 of Title 18 of the*
36 *United States Code. “Adult entertainment movie” shall not include*
37 *a motion picture that does not depict either nudity or sexually*
38 *explicit conduct in a public place or unprotected sexual activity.*

39 (b) *“Cable provider” means the person or entity providing*
40 *cable television services through the cable television system.*

1 (c) “Hotel owner or operator” means the person or entity that
2 owns and operates any hotel, motel, bed and breakfast inn, or
3 other similar transient lodging establishment.

4 (d) “Nudity” means the showing of the human male or female
5 genitals, pubic area, or buttocks with less than a fully opaque
6 covering.

7 (e) “Pay-per-view” means a delivery by a hotel owner or
8 operator, cable provider, or satellite television provider of a single
9 program or a specified group of programs, as to which each such
10 single program is generally uninterrupted by commercial
11 advertising messages and for which recipients are charged a
12 separate fee for each program or specified group of programs.
13 “Pay-per-view” shall also include delivery of a single program
14 for which multiple start times are made available at time intervals
15 which are less than the running time of such program as a whole.

16 (f) “Public place” means an area open to the public or exposed
17 to public view and includes streets, sidewalks, bridges, alleys,
18 plazas, parks, driveways, parking lots, automobiles, whether
19 moving or not, buildings open to the general public, and the
20 doorways and entrances to buildings or dwellings and the grounds
21 enclosing them.

22 (g) “Satellite television provider” means the person or entity
23 providing satellite television services through a satellite
24 broadcasting system.

25 (h) “Sexually explicit conduct” means any of the following
26 actual, but not simulated, conduct:

27 (1) Sexual intercourse, including genital-genital, oral-genital,
28 anal-genital, or oral-anal, whether between persons of the same
29 or opposite sex.

30 (2) Masturbation.

31 (3) Sadistic or masochistic abuse.

32 (4) Lascivious exhibition of the genitals or pubic area of any
33 person.

34 (i) “Total gross charges” means any and all charges imposed
35 on the purchaser related to the transmission of a pay-per-view
36 adult entertainment movie.

37 (j) “Unprotected sexual activity” means sexual activity without
38 the use of a condom or other visible form of protection against
39 sexually transmitted diseases.

1 33103. *On and after January 1, 2008, in addition to any other*
2 *tax imposed by this division, for the privilege of purchasing cable*
3 *television or satellite television services, a tax is hereby imposed*
4 *on each purchaser of a pay-per-view adult entertainment movie*
5 *in this state at the rate of eight percent of the total gross charges*
6 *incurred by a purchaser for the pay-per-view adult entertainment*
7 *movie.*

8 33104. *The tax imposed by this part shall be collected from a*
9 *purchaser by a hotel owner or operator, the cable provider, or*
10 *satellite television provider to the extent permitted by state or*
11 *federal law. If the tax is not collected by the hotel owner or*
12 *operator, the cable provider, or the satellite television provider,*
13 *the purchaser shall pay the tax directly to the board.*

14 33105. *To the extent feasible or practicable, Section 1556.1*
15 *of the Civil Code, the provisions of Chapter 5 (commencing with*
16 *Section 6451), Chapter 6 (commencing with Section 6701), Chapter*
17 *7 (commencing with Section 6901), and Chapter 8 (commencing*
18 *with Section 7051) of Part 1, shall govern determinations,*
19 *collections of tax, overpayments and refunds, and administration*
20 *under this part.*

21 33106. *The board shall enforce the provisions of this part and*
22 *may prescribe, adopt, and enforce rules and regulations relating*
23 *to the administration and enforcement of this part, including*
24 *regulations regarding claims for refunds for taxes paid or incurred*
25 *pursuant to this part. The board may prescribe the extent to which*
26 *any ruling or regulation shall be applied without retroactive effect.*

27 33107. (a) *All amounts required to be paid to the state under*
28 *this part shall be paid to the board in the form of remittances*
29 *payable to the State Board of Equalization. It is the intent of the*
30 *Legislature that the board shall transmit the payments, less refunds*
31 *and the board's costs of administration, to the Treasurer to be*
32 *deposited in the State Treasury to the credit of the Adult*
33 *Entertainment Impact Fund.*

34 (b) *Moneys in the Adult Entertainment Impact Fund shall, upon*
35 *appropriation by the Legislature, be used to ameliorate the*
36 *secondary effects of nudity and sexually explicit conduct in public*
37 *places and unprotected sex.*

38 SEC. 5. *The provisions of this act are severable. If any*
39 *provision of this act or its application is held invalid, that invalidity*

1 *shall not affect other provisions or applications that can be given*
2 *effect without the invalid provision or application.*

3 ~~SEC. 4.~~

4 *SEC. 6.* This act provides for a tax levy within the meaning of
5 Article IV of the Constitution and shall go into immediate effect.

O