

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 314

Introduced by Christensen, 44.

Read first time January 17, 2013

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to escort agencies; to adopt the Escort Services
- 2 Accountability and Permit Act; to provide penalties; to
- 3 provide an operative date; and to provide severability.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 13 of this act shall be known
2 and may be cited as the Escort Services Accountability and Permit
3 Act.

4 Sec. 2. The Legislature declares that the Escort Services
5 Accountability and Permit Act shall be deemed an exercise of police
6 powers of the state for the protection of the economic and social
7 welfare and the health, welfare, and safety of the people of this
8 state. The Legislature further declares that the permitting and
9 regulation of escort agencies and their employees are matters of
10 statewide concern, therefor the act shall be applicable in every
11 county, city, and village of this state.

12 Sec. 3. For purposes of the Escort Services
13 Accountability and Permit Act:

14 (1) Child care facility has the same meaning as in
15 section 29-4016;

16 (2)(a) Escort means an individual who agrees or offers,
17 for consideration, to act as a companion, guide, or date for a patron
18 or who agrees or offers to provide, for consideration, private erotic
19 entertainment services for a patron.

20 (b) Escort does not include an individual who provides
21 transportation or in-home care or medical services to the elderly or
22 disabled, provides child care services, or acts as a hunting guide or
23 private tour guide;

24 (3) Escort agency means any person who furnishes or
25 offers or advertises to furnish an escort for consideration;

1 (4)(a) Escort agency employee means an individual who
2 performs any service for an escort agency on a full-time, part-time,
3 or contract basis, regardless of whether such person is paid a
4 salary, wage, or other form of compensation by the owner of such
5 agency and includes an individual acting as an escort.

6 (b) Escort agency employee does not include an individual
7 exclusively on the permitted premises of an escort agency for the
8 repair or maintenance of the permitted premises or equipment on the
9 premises or for the delivery of goods to such escort agency;

10 (5) Escort agency employee permit means a permit issued
11 under section 7 of this act;

12 (6) Escort agency permit means a permit issued under
13 section 6 of this act;

14 (7) Local permit authority means the governing body of
15 any county, city, or village or any authority designated by such
16 governing body by ordinance or resolution;

17 (8) Nudity or state of nudity means the showing of the
18 human genitals, pubic area, vulva, or anus with less than a fully
19 opaque covering or the showing of the female breast with less than a
20 fully opaque covering of any part of the nipple and areola;

21 (9) Patron means any person who compensates an escort
22 agency or escort agency employee with any form of consideration for
23 the provision of an escort or the receipt of services from an escort;

24 (10) Permitted premises means the real property upon
25 which the escort agency is located and all appurtenances thereto and

1 buildings on the property, including, but not limited to, the escort
2 agency and the grounds, private walkways, parking lots, and adjacent
3 parking garages under the ownership, control, or supervision of the
4 escort agency;

5 (11) Person has the same meaning as in section 49-801;

6 (12) Playground has the same meaning as in section
7 28-416;

8 (13)(a) Private erotic entertainment services means any
9 lawful activity or entertainment services performed in private:

10 (i) That are sexually provocative in nature for a patron
11 or a group of patrons;

12 (ii) That are not performed while in a state of nudity;

13 and

14 (iii) That do not include the touching of a patron while
15 in a state of semi-nudity.

16 (b) Private erotic entertainment services includes
17 privately, while not in a state of nudity, (i) modeling lingerie for
18 a patron or a private group of patrons, (ii) performing a semi-nude
19 striptease for a patron or a private group of patrons, (iii) lawfully
20 performing a fantasy role play for a patron or a private group of
21 patrons, or (iv) engaging in any other lawful activity or
22 entertainment in person and of a sexually provocative nature for a
23 patron or a private group of patrons;

24 (14) Residential area means an area zoned exclusively for
25 residential use;

1 (15) School has the same meaning as in section 29-4016;

2 (16) Semi-nude or state of semi-nudity means the showing
3 of the female breast below a horizontal line across the top of the
4 areola and extending across the width of the breast at that point, or
5 the showing of the male or female buttocks. Semi-nude or state of
6 semi-nudity includes the lower portion of the female breast, but does
7 not include any portion of the cleavage of the female breast
8 exhibited by a bikini, dress, blouse, shirt, leotard, or similar
9 apparel if the areola is not exposed in whole or in part; and

10 (17) Youth center has the same meaning as in section
11 28-416.

12 Sec. 4. (1) It shall be unlawful for a person:

13 (a) To operate an escort agency without a permit pursuant
14 to section 6 of this act;

15 (b) Who operates an escort agency to employ an individual
16 to work for such agency who does not hold a permit as an escort
17 agency employee pursuant to section 7 of this act;

18 (c) To advertise as an escort agency or to hold himself
19 or herself out as an escort agency or to use or display the words
20 escort agency without a permit pursuant to section 6 of this act;

21 (d) To knowingly provide false information to a local
22 permit authority on application for, renewal of, or investigation of
23 an escort agency permit;

24 (e) Who operates an escort agency to allow an escort
25 agency employee to be in a state of nudity while in the presence of a

1 patron;

2 (f) Who operates an escort agency to knowingly provide a
3 service to any person under the age of eighteen years as a patron of
4 the escort agency;

5 (g) Who is a patron to be in a state of nudity or semi-
6 nudity while in the presence of an escort agency employee;

7 (h) Who is a patron to touch an escort agency employee
8 while such employee is in a state of semi-nudity;

9 (i) To act as an escort agency employee without a permit
10 pursuant to section 7 of this act;

11 (j) Who holds a permit as an escort agency employee to
12 not have the permit on his or her person at all times; or

13 (k) Who holds a permit as an escort agency employee to
14 touch a patron while such employee is in a state of semi-nudity.

15 (2)(a) Any violation of subdivision (1)(a), (b), (c), or
16 (d) of this section shall be a Class III felony and any person
17 convicted of such offense shall pay a fine of not less than five
18 thousand dollars. If the court places such person on probation, such
19 order of probation shall include, as one of its conditions, the
20 payment of a fine of not less than five thousand dollars.

21 (b) Any violation of subdivision (1)(e) or (f) of this
22 section shall be a Class IIIA felony and any person convicted of such
23 offense shall pay a fine of not less than two thousand five hundred
24 dollars. If the court places such person on probation, such order of
25 probation shall include, as one of its conditions, the payment of a

1 fine of not less than two thousand five hundred dollars.

2 (c) Any violation of subdivision (1)(g) or (h) of this
3 section shall be a Class I misdemeanor for the first offense and any
4 person convicted of such offense shall pay a fine of not less than
5 five hundred dollars. Any second or subsequent violation shall be a
6 Class IIIA felony and any person convicted of such offense shall pay
7 a fine of not less than two thousand five hundred dollars. If the
8 court places such person on probation, such order of probation shall
9 include, as one of its conditions, the payment of a fine of not less
10 than five hundred dollars for a first offense and two thousand five
11 hundred dollars for a second or subsequent offense.

12 (d) Any violation of subdivision (1)(i), (j), or (k) of
13 this section shall be a Class II misdemeanor. It shall be an
14 affirmative defense for a violation of such subdivisions that the
15 defendant was a victim of human trafficking pursuant to sections
16 28-830 and 28-831.

17 Sec. 5. (1) An application for a permit under section 6
18 or 7 of this act shall be on a form provided by the local permit
19 authority. The application may require any information that the local
20 permit authority deems necessary to determine if the applicant meets
21 the permit requirements under section 6 or 7 of this act. The local
22 permit authority may deny a permit issued under the Escort Services
23 Accountability and Permit Act if all application requirements are not
24 satisfied at the time of application or may suspend or revoke a
25 permit if any application requirements are not satisfied after

1 issuance of the permit. Any applicant may appeal the local permit
2 authority's decision to deny the permit. Such appeal shall be in
3 accordance with the Administrative Procedure Act.

4 (2) The applicant shall submit with the application a
5 full set of fingerprints of the applicant if he or she is an
6 individual and of each partner or officer if the applicant is a
7 partnership or corporation which shall be forwarded to the Nebraska
8 State Patrol to be submitted to the Federal Bureau of Investigation
9 for a national criminal history record information check. The
10 applicant shall authorize release of the results of the national
11 criminal history record information check to the local permit
12 authority. The applicant shall pay the cost of the fingerprinting and
13 criminal background check.

14 Sec. 6. (1) An applicant for an escort agency permit
15 shall provide to the local permit authority an application fee that
16 does not exceed three hundred dollars and an application pursuant to
17 section 5 of this act that also contains the following:

18 (a)(i) If the applicant is an individual, his or her
19 legal name and all aliases the individual may use or has used and
20 written proof that the individual is at least eighteen years of age
21 and has been a resident of the state for at least one hundred eighty
22 days;

23 (ii) If the applicant is a partnership: The name of the
24 partnership; the names of all partners and written proof that each
25 partner is at least eighteen years of age and has been a resident of

1 the state for at least one hundred eighty days; whether the
2 partnership is a general or limited partnership; and a copy of the
3 partnership agreement, if any; and

4 (iii) If the applicant is a corporation: The name of the
5 corporation; the date of incorporation; written proof that the
6 corporation is in good standing under the laws of its state of
7 incorporation and this state; the names and capacities of all
8 officers, directors, and controlling stockholders of the corporation
9 and written proof that each officer of the corporation is at least
10 eighteen years of age and has been a resident of the state for at
11 least one hundred eighty days; the name of the registered corporate
12 agent; and the address of the registered office for service of
13 process;

14 (b) The name of the escort agency if different than the
15 name provided pursuant to subdivision (1)(a) of this section;

16 (c) Whether the applicant or any partner, officer,
17 director, or controlling stockholder of the applicant has been
18 convicted of a felony or misdemeanor and the details of the
19 conviction, including the type, date, and location of the conviction;

20 (d) Whether the applicant has been denied a permit or
21 holds or has held a permit under the Escort Services Accountability
22 and Permit Act and such permit was suspended or revoked. The
23 applicant shall include the name and location of the escort agency
24 under which the permit was held and the date of denial, suspension,
25 or revocation of the permit;

1 (e) Whether the applicant has been a partner of a
2 partnership or an officer, director, or controlling stockholder of a
3 corporation that has been denied a permit or holds or has held a
4 permit under the act and such permit was suspended or revoked. The
5 applicant shall include the name and location of the escort agency
6 under which the permit was held and the date of denial, suspension,
7 or revocation;

8 (f) The location of the escort agency, including a legal
9 description of the property, the physical address, and the telephone
10 number or numbers;

11 (g) The applicant's mailing address, if different from
12 the address in subdivision (1)(f) of this section, and residential
13 address if the applicant is an individual;

14 (h) Photo identification of the individual applicant,
15 partners, or corporate officers;

16 (i) The date of issue, state of issue, and number of the
17 individual applicant's, partner's, or corporate officer's operator's
18 license or state identification card;

19 (j) A sketch or diagram showing the configuration of the
20 premises of the escort agency, including the amount of floor space
21 occupied by the agency. The sketch or diagram may be prepared by a
22 professional and shall be drawn to a designated scale or with marked
23 dimensions of the interior of the premises to an accuracy within six
24 inches;

25 (k) A certificate and straight-line drawing prepared by a

1 registered land surveyor no more than thirty days prior to submission
2 of the application under this section that depicts (a) the property
3 lines and the structures containing any existing escort agency
4 holding a permit or required to hold a permit under the act within
5 one thousand feet of the property of the applicant and (b) the
6 property lines of a child care facility, church, school, playground,
7 youth center, or residential area within one thousand feet of the
8 property of the applicant; and

9 (1) The signature of the applicant. If the applicant is
10 not an individual, all individuals responsible for the operation of
11 the escort agency or who have control or direction over the escort
12 agency's operations shall sign the application for the permit. Such
13 individuals may include, but are not limited to, partners, officers,
14 directors, and controlling shareholders.

15 (2) The local permit authority shall assess a fee for the
16 issuance of a new permit that is at least one thousand dollars but
17 not more than five thousand dollars and that is due upon issuance of
18 a new permit. A permit issued under this section shall be effective
19 for one year after the date of issuance. A permitholder may apply for
20 a permit renewal at least forty-five days but not more than ninety
21 days prior to the expiration of the permit by submitting a renewal
22 fee of at least one thousand dollars but not more than five thousand
23 dollars as determined by the local permit authority and satisfying
24 the application requirements. The local permit authority may cause a
25 hearing on the application for renewal to be held. No such renewal

1 hearing shall be held by the local permit authority until a notice of
2 hearing has been conspicuously posted on the permitted premises for a
3 period of ten days and notice of the hearing has been provided to the
4 applicant at least ten days prior to the hearing. The local permit
5 authority may refuse to renew any permit for good cause, subject to
6 judicial review.

7 Sec. 7. (1) An applicant for an escort agency employee
8 permit shall provide to the local permit authority an application fee
9 that does not exceed two hundred dollars and an application pursuant
10 to section 5 of this act that also contains the following:

11 (a) His or her legal name and all aliases the applicant
12 may use or has used and written proof that the applicant is at least
13 eighteen years of age;

14 (b) The applicant's date and location of birth;

15 (c) The applicant's height, weight, hair color, and eye
16 color;

17 (d) The address and telephone number of the applicant's
18 residence;

19 (e) The address and telephone number of any other place
20 of employment of the applicant, if any;

21 (f) The date of issue, state of issue, and number of the
22 applicant's operator's license or state identification card;

23 (g) A color photo of the applicant clearly showing the
24 applicant's face;

25 (h) The applicant's fingerprints on a form provided by

1 the local permit authority;

2 (i) A signed affidavit detailing the escort service
3 permit history of the applicant for five years immediately preceding
4 the date of the application under this section, including whether the
5 applicant has previously held a license, permit, or authorization
6 from another issuing authority and if such license, permit, or
7 authorization was ever denied, suspended, or revoked. If the
8 applicant has had a license, permit, or authorization denied,
9 suspended, or revoked, the applicant shall provide the name of the
10 issuing authority and a full description of the reason for such
11 denial, suspension, or revocation. The applicant shall include a
12 written copy of such denial, revocation, or suspension, if such copy
13 exists;

14 (j) A signed affidavit stating whether the applicant has
15 been convicted of a felony or misdemeanor and the details of the
16 conviction, including the type, date, and location of the conviction;
17 and

18 (k) The signature of the applicant.

19 (2) The local permit authority shall assess a fee for the
20 issuance of a new permit that is at least one thousand dollars but
21 not more than five thousand dollars and that is due upon issuance of
22 a new permit. A permit issued under this section shall be effective
23 for one year after the date of issuance. A permitholder may apply for
24 a permit renewal at least forty-five days but not more than ninety
25 days prior to the expiration of the permit by submitting a renewal

1 fee of at least one thousand dollars but not more than five thousand
2 dollars as determined by the local permit authority and satisfying
3 the application requirements. The local permit authority may cause a
4 hearing on the application for renewal to be held. No such renewal
5 hearing shall be held by the local permit authority until a notice of
6 hearing has been conspicuously posted on the permitted premises for a
7 period of ten days and notice of the hearing has been provided to the
8 applicant at least ten days prior to the hearing. The local permit
9 authority may refuse to renew any permit for good cause, subject to
10 judicial review.

11 Sec. 8. (1) Within sixty days after receipt of an
12 application for an escort agency permit, the local permit authority
13 shall approve or deny such application. If the application is
14 approved, such permit shall be issued to the applicant. The local
15 permit authority shall deny the application if a determination is
16 made of one of the following:

17 (a) The applicant is under eighteen years of age;

18 (b) The applicant has failed to remit any taxes, fees,
19 finances, or penalties assessed by the State of Nebraska with respect to
20 the operation of any business;

21 (c) The applicant has failed to provide the information
22 required in section 6 of this act or has provided false information
23 in the application;

24 (d) The applicant has been denied a permit to operate an
25 escort agency by any local permit authority within the preceding two

1 years or has had a permit to operate an escort agency suspended or
2 revoked within the preceding two years;

3 (e) The applicant has been convicted of a felony. The
4 local permit authority may deny the application if the applicant has
5 been convicted of a misdemeanor for fraud, deceit, assault, sexual
6 misconduct, drug-related misconduct, or prostitution-related
7 misconduct;

8 (f) The premises of the escort agency has not received
9 approval from the local health department, fire department, and
10 building officials for compliance with applicable local laws or
11 ordinances; or

12 (g) The applicant has failed to pay the required permit
13 fee.

14 (2) An escort agency permit shall state on its face the
15 name of the person to whom the permit is issued, the expiration date
16 of the permit, the physical address of the escort agency, and the
17 fact that the permit is for operation of an escort agency. The escort
18 agency shall conspicuously post the escort agency permit at or near
19 the entrance of the escort agency.

20 Sec. 9. (1) Within thirty days after receipt of an
21 application for an escort agency employee permit, the local permit
22 authority shall approve or deny such application. If the application
23 is approved, such permit shall be issued to the applicant. The local
24 permit authority shall deny the application if a determination is
25 made of one of the following:

1 (a) The applicant is under eighteen years of age;

2 (b) The applicant has failed to provide the information
3 required in section 7 of this act or has provided false information
4 on his or her application;

5 (c) The applicant has been convicted of a felony. The
6 local permit authority may deny the application if the applicant has
7 been convicted of a misdemeanor for fraud, deceit, assault, sexual
8 misconduct, drug-related misconduct, or prostitution-related
9 misconduct;

10 (d) The applicant has failed to pay the required permit
11 fee;

12 (e) The applicant intends to use the permit for
13 employment at a business prohibited by local or state law; or

14 (f) The applicant has previously held an escort agency
15 employee permit and has had such permit suspended or revoked by a
16 local permit authority within the two years prior to the date of
17 application under the Escort Services Accountability and Permit Act.

18 (2) An escort agency employee permit shall have a photo
19 of the individual to whom the permit is issued and state on its face
20 the name of the individual to whom the permit is issued, the
21 expiration date of the permit, and the fact that the permit is an
22 escort agency employee permit. An escort agency shall conspicuously
23 post a copy of the escort agency employee permit or permits issued to
24 its employee or employees at or near the entrance of the escort
25 agency.

1 Sec. 10. (1) An escort agency shall refer any prospective
2 escort agency employees to the local permit authority to obtain an
3 escort agency employee permit. Upon termination of employment of any
4 escort agency employee, the escort agency shall notify the local
5 permit authority of such termination within five days.

6 (2) The escort agency shall provide to every patron a
7 written contract for services. The contract shall clearly state the
8 name of the escort agency employee and the name, address, date of
9 birth, and driver's license number or other number from another type
10 of identification of the patron, the type of services to be
11 performed, the length of time such services shall be performed, the
12 total amount of money such services will cost the patron, and any
13 special terms or conditions relating to the services to be performed.
14 The contract shall include a statement in clear and concise language
15 that prostitution is illegal in this state and that both parties to
16 an act of prostitution may be punished by both fine and imprisonment
17 and that no act of prostitution shall be performed in relation to the
18 services for which are contracted. Each contract shall be numbered
19 and utilized in numerical sequence by the escort agency. The contract
20 shall be signed by the patron and a copy furnished to him or her. The
21 escort agency shall also retain copies of all such contracts, and one
22 copy of each such contract executed in any calendar month shall be
23 transmitted by the escort agency to the local permit authority no
24 later than ten days after the last day of such month. Each escort
25 agency employee shall admit, at any reasonable time during normal

1 business hours, any law enforcement officer onto the premises of the
2 escort agency for the purpose of examining such contracts or any
3 portion of the premises used for operational purposes. The local
4 permit authority shall allow law enforcement access to all such
5 contracts.

6 Sec. 11. (1) Each permit issued under the Escort Services
7 Accountability and Permit Act by a local permit authority shall be
8 valid only within the territorial boundaries of the local permit
9 authority.

10 (2) Each permit issued under the act is separate and
11 distinct, and no person shall exercise any of the privileges granted
12 under any permit other than that which he or she holds. A separate
13 permit shall be obtained by each person wishing to exercise any of
14 the privileges governed by the act and for each geographical location
15 at or from which any person wishes to conduct business as an escort
16 agency or an escort agency employee.

17 (3) No permit issued under the act shall be transferred
18 or assigned, with or without consideration, without the consent of
19 the local permit authority. Any attempted transfer or assignment
20 without the consent of the local permit authority shall render the
21 applicable permit void.

22 (4) No changes of location for an escort agency shall be
23 allowed without the consent of the local permit authority. Any
24 attempted change of location for a permitted premises without the
25 consent of the local permit authority shall render the applicable

1 permit void.

2 Sec. 12. (1) The Escort Services Accountability and
3 Permit Act is intended to provide minimum standards for the
4 permitting of escort agencies and escort agency employees. Nothing in
5 the act shall prohibit a county, city, or village from enacting an
6 ordinance providing more stringent standards for such permits, but
7 such ordinance shall meet the minimum standards established by the
8 act. To the extent that the act directs implementation by a county,
9 all such implementation may be accomplished by ordinance. Any
10 implementation needed under the act to create a local permit
11 authority shall be required only upon a request to the county, city,
12 or village for an application for a permit to operate an escort
13 agency within the jurisdiction of the county, city, or village. Such
14 request shall not be acted upon until the implementation of such
15 local permit authority by ordinance has been accomplished.

16 (2) In addition to the powers granted by section 23-104
17 and sections 23-187 to 23-193, but not subject to the requirements of
18 section 23-192, a county may enact an ordinance to carry out the
19 purposes of the act.

20 Sec. 13. Nothing in the Escort Services Accountability
21 and Permit Act shall be construed to permit or authorize conduct or
22 activity prohibited by the Nebraska Criminal Code.

23 Sec. 14. This act becomes operative on October 1, 2013.

24 Sec. 15. If any section in this act or any part of any
25 section is declared invalid or unconstitutional, the declaration

1 shall not affect the validity or constitutionality of the remaining
2 portions.