

THE FIGHT FOR FREEDOM.

How the Sexually Oriented
Business Laws apply to the
Lifestyle (and what you can do)



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NCSF is an all-volunteer nonprofit organization

- A coalition of over 150 educational and social groups and businesses that serve consenting adults
- An advocacy group that challenges systemic discrimination in government and private sector services
- Educating law enforcement, agencies, state and local officials, and professionals about the Alt-sex communities
- A media advocacy and training organization that is changing the way people think about diverse sexualities among consenting adults
- A resource for information on dealing with consent incidents and creating a consent policy
- A non-profit membership organization that provides direct services
- A charitable foundation that provides education about diverse sexualities



Who We Are

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What are the SOB Laws?

- Sexually Oriented Business Tax
- Live Sex Act Business Code
- Live Entertainment
- Obscenity Laws
- Adverse Secondary Effects
- Absolute Prohibition of Live Sex Acts



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What is a Sexually Oriented Business?

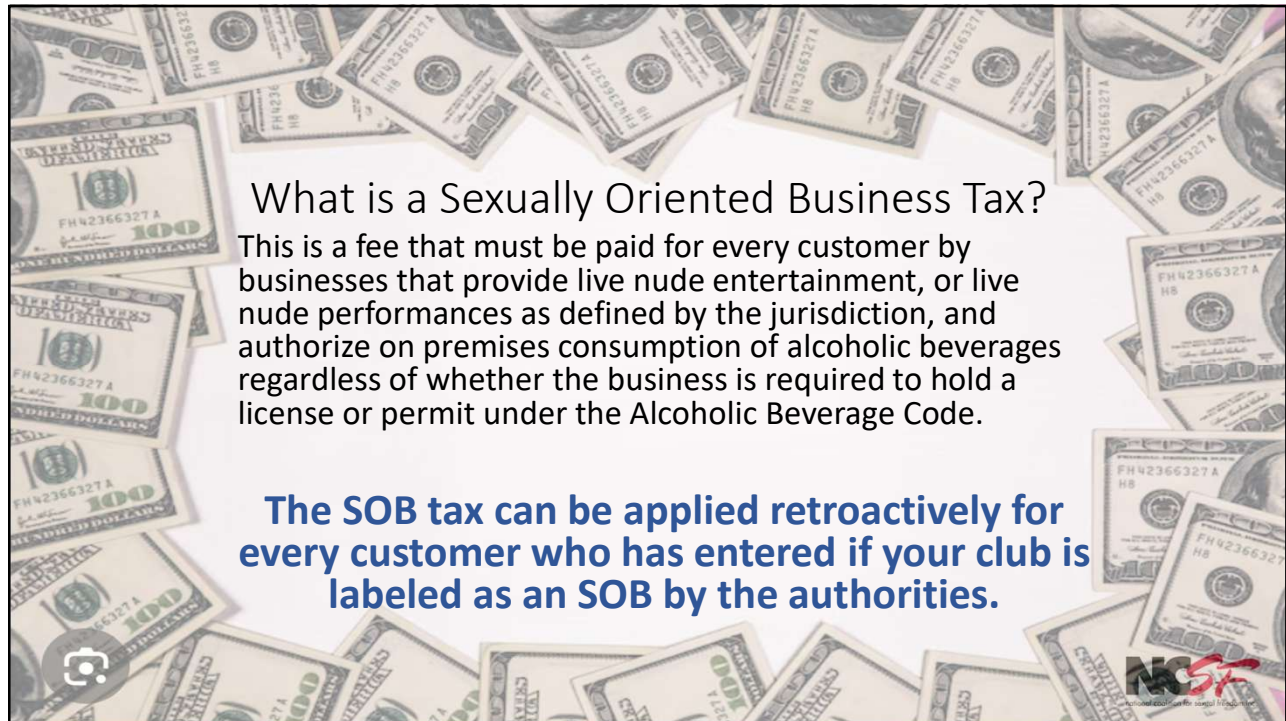
In United States law, a sexually oriented business (S.O.B.[1]) is a business that is part of the sex industry, such as sites of erotic performance and erotic paraphernalia stores.

Often regulations of SOBs enter law as part of zoning regulations by jurisdictions when trying to maintain the character of a particular community and discourage elements of society that may be considered harmful for their connection to the sex industry.[2]

Though many regulations of SOBs arguably violate First Amendment rights in the United States, lawmakers will use the secondary effects doctrine—in which restrictions of First Amendment rights are legal if the restrictions can prevent harm to the larger community—to justify regulation of SOBs.




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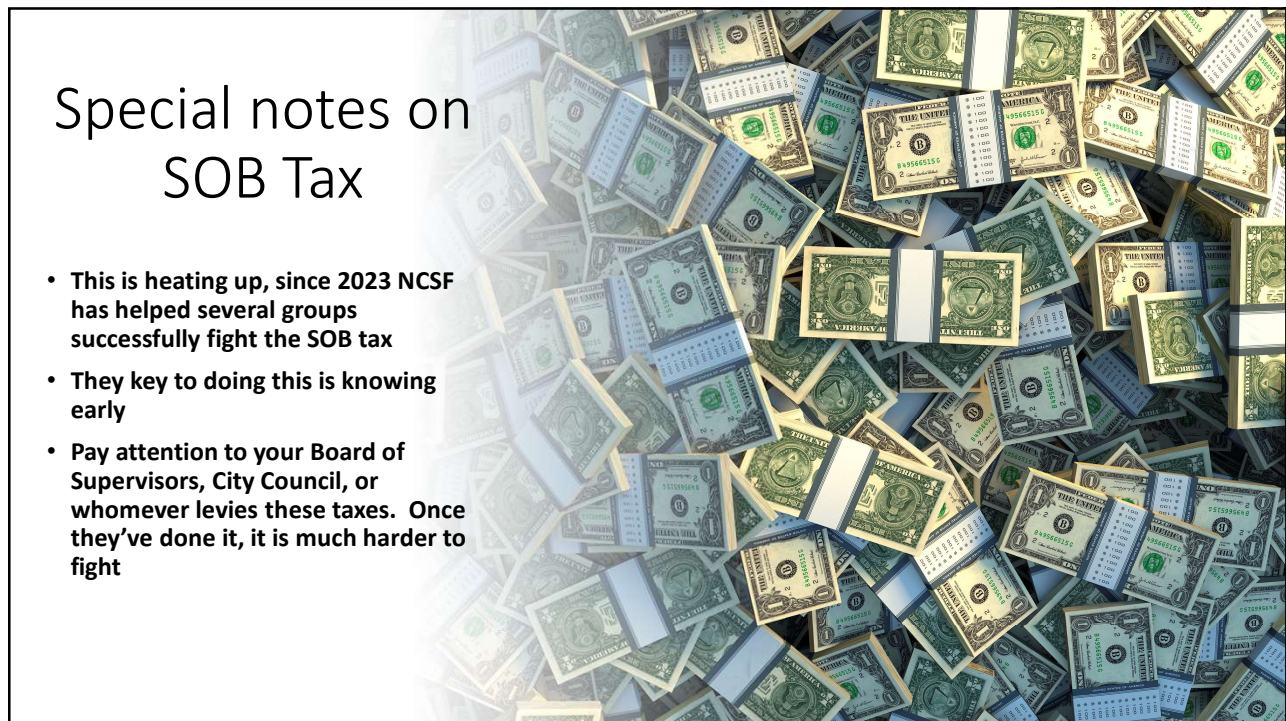
What is a Sexually Oriented Business Tax?

This is a fee that must be paid for every customer by businesses that provide live nude entertainment, or live nude performances as defined by the jurisdiction, and authorize on premises consumption of alcoholic beverages regardless of whether the business is required to hold a license or permit under the Alcoholic Beverage Code.

The SOB tax can be applied retroactively for every customer who has entered if your club is labeled as an SOB by the authorities.



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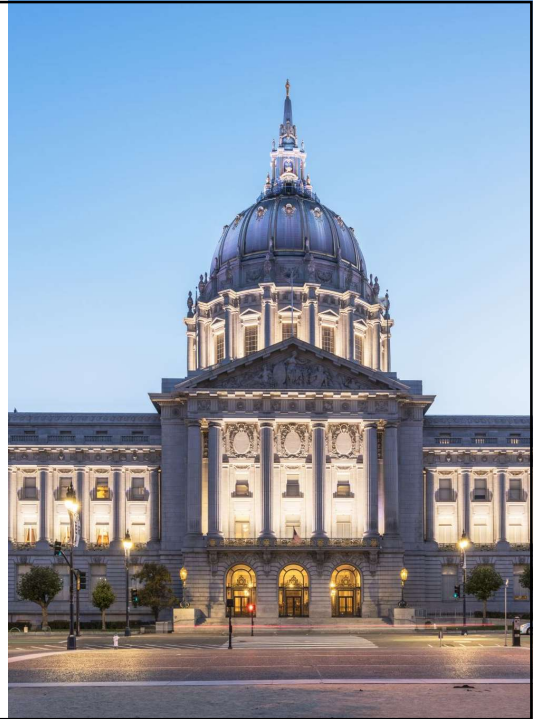
Special notes on SOB Tax

- This is heating up, since 2023 NCSF has helped several groups successfully fight the SOB tax
- They key to doing this is knowing early
- Pay attention to your Board of Supervisors, City Council, or whomever levies these taxes. Once they've done it, it is much harder to fight

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Live Sex Act Business Code

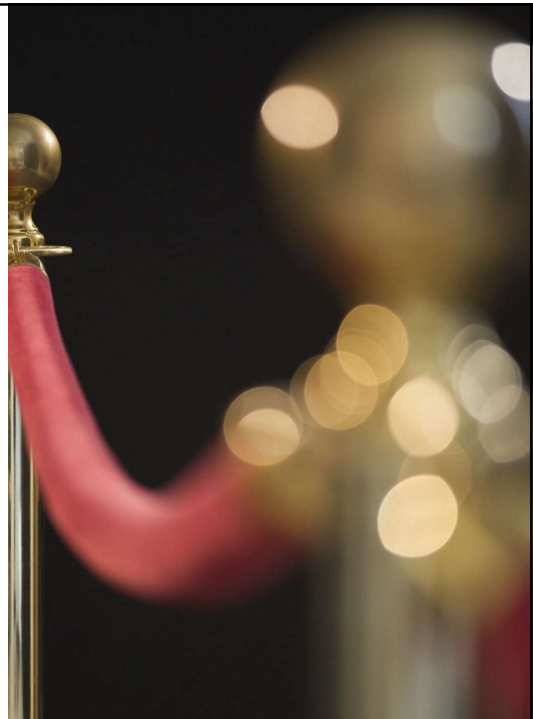
- Also known as the Phoenix Ordinance. On December 9, 1998, the Phoenix City Council unanimously passed an ordinance which made it a nuisance crime to own or operate a swingers club, resulting in fines and closure. The Scottsdale-based National Family Legal Foundation, a conservative Christian organization, helped Phoenix city attorneys draft the law.
- Since then, many other cities have passed their own version. In August 2019, the City Council in Ft. Wayne, Indiana, considered a Live Sex Act Businesses ordinance to shut down The Champagne Club. City Council Member John Crawford argued successfully against it because it was based on morality, stating, "Based on all the evidence and data I've found on this club, I don't think they are hurting anyone and the citizens are living their lives as they see fit."



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Live Entertainment

Even if you don't pay performers to dance on a pole, your club may be "providing" live entertainment if you are providing a venue where people can see others have sex. "Watching" is the hallmark of live entertainment, so allowing people to watch someone have sex has been used to label clubs as a Sexually Oriented Business. Clubs have gotten around this by creating cubicles with doors that can be closed. That way any sexual activity is technically taking place in private, though doors can be cracked or left unlocked to indicate others are welcome inside. Notice should be given that there is no expectation that any door you close will remain closed, and that staff can enter to ensure safety.



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Obscenity Laws

- Obscenity laws prohibiting sexual activity in the view of the public
- The municipality will see you as “public” if you don’t have a “barrier to entry”
- A barrier to entry must be ‘real’. If someone can pay and walk in, that isn’t a barrier to entry. There is some well-defined case law about this: *Eagle v Chicago*, *Power Exchange v California*.
- In many jurisdictions, obscenity laws are invoked when someone goes to an authority and says, “I am offended”, and that is enough for probable cause. Then you are on the defense.

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Adverse Secondary Effects

Adverse Secondary Effects is a legal doctrine that enables cities to regulate sexually oriented businesses as long as the aim is to prevent crime, depreciation of property values and spread of disease. A Secondary Effects Study measures the adverse secondary effects, both direct and indirect, of a sexually oriented business on the neighborhood.

These studies are used to justify closing sexually oriented businesses, or when no correlation to crime or lowered property values is shown, to allow clubs to remain open.

In *Los Angeles v. Alameda Books* (2002) the court found that evidence that was shoddy or not derived from a specific area does not justify regulation, and the ruling places the burden of proof on the government for collecting “substantial” data to justify the claims of adverse secondary effects.

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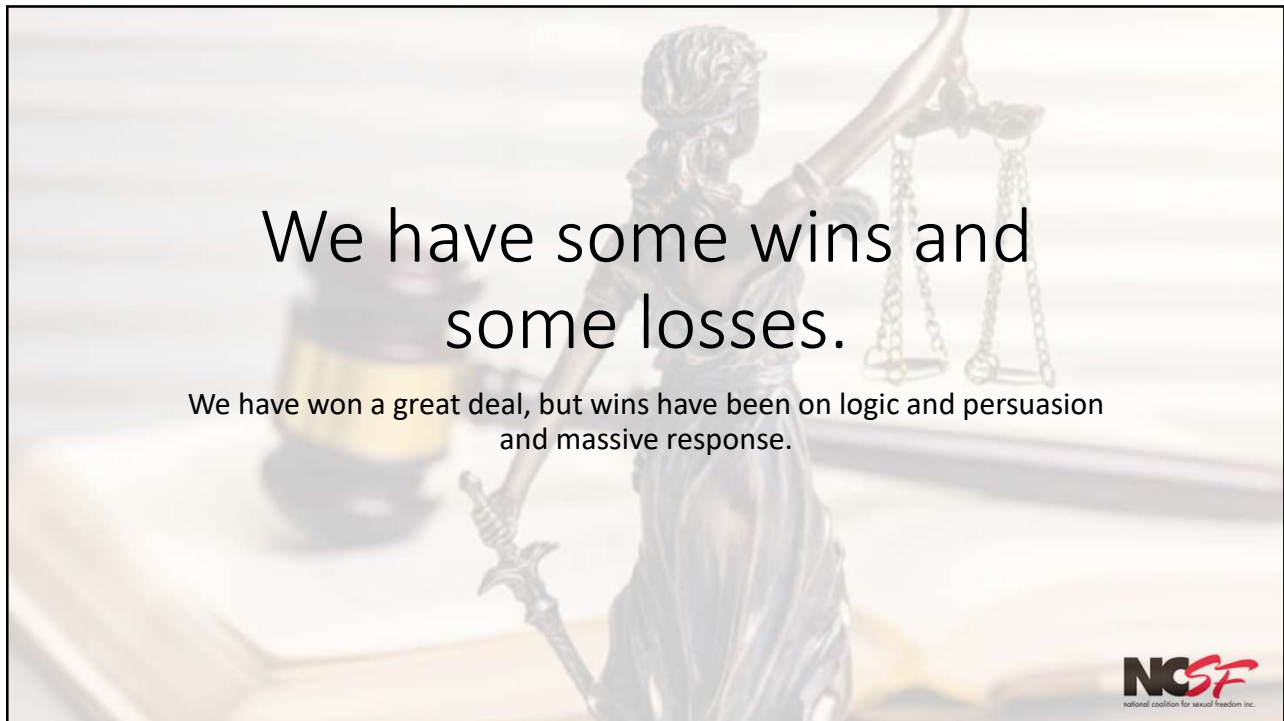


The Newest Attack

Amending the Zoning Ordinance to include sexual encounter clubs under the adult oriented establishment definition and regulations.




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We have some wins and some losses.

We have won a great deal, but wins have been on logic and persuasion and massive response.



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The way to put these to bed and really begin the fight is to create a solid legal case against them.

Not a single challenge to the Phoenix Ordinance Laws has ever been won.



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So, we need to take some of these to court.

Barriers to Winning

- Money
- “It isn’t about me...”
- A similar constitutional argument can be made about communities setting their own behavior standard that we are making against it.

WHAT THIS MEANS

- Fundraising for lawyers
 - These are very expensive cases
- Injunctions for new ones
- Constitutional Challenges to existing laws



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To Move Forward:

We need to find a GOOD case.

Lawrence v. Texas

- Let's not make the Roe v. Wade mistake
- We would need to follow up the Lawrence-based wins with new legislation of our own.
- We have to be very careful what we push to the current Supreme Court



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The Arguments

Lawrence v Texas

Constitutional Right to Gather in Private

- Private Membership Clubs

Definitions are too expansive

First Amendment

Adverse Secondary Effects

- Content-Neutral Regulations
- Trying to get a public health expert at University to combat this with their own study

Overly broad restrictions

Equal Protection

Twenty-first Amendment



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The Eventual Outcome

With enough local laws, we can take it to Congress, get a new report to replace The **Meese Report**

(Named for [Edwin Meese](#)), officially the ***Final Report of the Attorney General's Commission on Pornography***, is the result of an investigation into [pornography](#) ordered by [U.S. President Ronald Reagan](#). It was published in July 1986 and contains 1,960 pages

This has been haunting us for almost 40 years, and we need an updated and less bias report.



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Other Supporting Work

- We are working hard to get legitimate Adverse Secondary Effects studies done that fight these poorly designed and executed studies that we're currently dealing with.
- We hope to start in Phoenix where it all began.
- These will allow us to bring better information to municipalities that want to regulate adult businesses.
 - We don't argue that there shouldn't be laws, but there should be laws that are not discriminatory and should be based in facts, not stigma.



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Targeted Donations...



If you're interested in this work, NCSF can take targeted donations specifically for the SOB project.



It is very expensive: travel, attorneys etc.



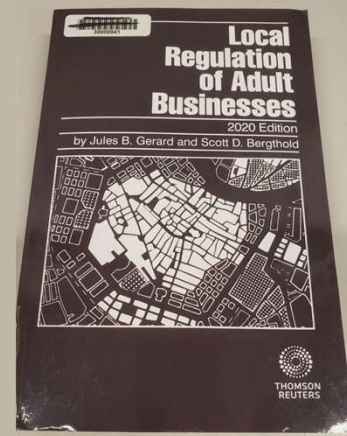
It takes thousands of dollars to do a study like this.



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They gave us their playbook...

So, let's make one of our own!



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The Freedom and Privacy Project

- Timeline and History of Sexually Oriented Business Laws
- Organizing to Protect Yourself from Sexually Oriented Business (SOB) Laws
- So, they are trying to call you a Sexually Oriented Business? What do you do now?
- Arguments Against Sexually Oriented Business Regulations
- Adverse Secondary Effects Case Law
- Sexually Oriented Business Case Law

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Notes on not “looking” like a SOB

- Health and Safety
- Barriers to entry
 - “Private”
- Crime
- Offer educational workshops

Please see “Organizing to Protect Yourself from Sexually Oriented Business (SOB) Laws”

Reach out to NCSF for more information

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NCSF Resources

Incident Reporting & Response

- Legal issues
- Discrimination issues (including the government)
- Consent issues
- Policy and Procedure
- Legal liability

Kink Aware Professionals Directory

- Free referrals for service professionals

Consent Counts

- Education
- Resources

Educational Outreach:

- Education for groups and events



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There are many ways to support NCSF!

- **Join:** Become a Coalition Partner, Supporting Member or Individual Member. By becoming a member, you support our lobbying efforts, Incident Reporting & Response, Kink Aware Professionals Directory and Professional Outreach.
- **Give:** Make a tax-deductible donation to the Foundation of the NCSF. Or ask your group to do a fundraiser and donate to NCSF.
- **Volunteer:** Volunteer and be part of the solution! Give your energy to NCSF efforts that impact your lives, those of your friends and loved ones, and the community at large.
- **Spread the Word:** Order free NCSF brochures and materials, and take them to your groups and events.
- **Wear with Pride:** Shop for NCSF merchandise at Amazon, and wear your support of NCSF with pride.
- **Support KAP:** If you are a lawyer, doctor, therapist or other professional who can offer "Sex-Positive Support for Kink and Non-monogamy," please add your listing to the Kink Aware Professionals Directory. NCSF manages the largest known free directory of kink and polyamory Aware professionals.



Join NCSF



Donate to NCSF



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TO REACH TESS
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Additional Resources:
Slide Deck and Links

NCSFreedom.org
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CONTACT THE NCSF FOR HELP!



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Newsletter /
Media Updates



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