



CALIFORNIA 2016
BALLOT BACKGROUNDER

Proposition **60**

Condoms in Adult Films

Research Assistant: Wesley Edwards

Purpose

Proposition 60 would place new regulations on California's adult film industry. Among other provisions, it would require producers to obtain a health permit before filming and would require performers in pornographic films wear condoms and other protective devices during intercourse to prevent the spread of sexually transmitted infections through bodily fluids.

Background

Bodily fluids may contain blood borne pathogens that can carry diseases and infections such as HIV, hepatitis B, and chlamydia. Performers in adult films are regularly exposed to these bodily fluids during filming and several performers have contracted STIs such as HIV from other performers. The transmission of STIs between performers also threatens the public health due to potential transmission to persons not affiliated in any way with the adult film industry. Given the severity of these infections, and the possibility that they will spread quickly among individuals who are unaware they are carrying them, Michael Weinstein, President of the AIDS Healthcare Foundation, has proposed numerous measures to standardize testing of adult performers and provide adequate protection against transmission through the use of personal protective items such as condoms and dental dams.

California and New Hampshire are the only two states where it is explicitly legal to shoot and record adult films. In the other 48 states, paying a performer to have intercourse on camera is considered prostitution and is therefore illegal. In 2014, adult film industry revenue from the

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United States totaled between \$10 and \$12 billion.¹ The Los Angeles area has long served as a hub for the production of pornographic films, accounting for between 60-70 percent of productions in 2014. Many of these productions took place in the San Fernando Valley because of its close proximity to the mainstream film industry in Los Angeles where equipment and labor—both performers and production staff—are readily available. While it is difficult to calculate exactly how the adult film industry affects the local economy, research from ten years ago estimated that it was responsible for producing 10,000 to 20,000 jobs annually and drove \$4 billion in annual sales.**Error! Bookmark not defined.**

In November 2012, the city of Los Angeles approved Measure B, which required pornography actors to wear condoms on set and required producers of adult films to pay an annual fee to the Los Angeles County Department of Public Health. The law was upheld in August 2013 after a lawsuit filed by members of the adult film industry claimed the measure imposed an unconstitutional restraint on workers' freedom of expression. After passage of Measure B in 2012, the number of permits issued for adult films dropped by 90 percent the following year.² This dramatic decrease seems to support the argument of Prop. 60's opponents that strict regulations do not result in safer industry practices; instead, the industry moves its productions elsewhere or goes underground and continues filming without complying with any regulations.

In June 2014, the Legislature defeated a bill that sought to achieve similar goals as Proposition 60. Its proponents thus turned to the initiative process.

Existing Law

Since 1993, California's Division of Occupational Safety and Health (Cal/OSHA) has considered exposure to certain bodily fluids as a workplace hazard because sexually transmitted diseases (STIs) such as chlamydia, HIV, and hepatitis B can be transmitted from infected individuals to healthy individuals through contact with blood or other bodily fluids. For this reason, current state regulations require employers to provide and ensure the use of protective equipment to prevent contact with bodily fluids in the workplace. These regulations extend to the adult film industry and therefore require the use of condoms during sexual acts on adult film sets. Cal/OSHA enforces these regulations by responding to complaints and has cited four production companies for violations over the two-year period of 2014 and 2015.

¹ <http://www.nbcnews.com/business/business-news/things-are-looking-americas-porn-industry-n289431>

² <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-onlocation-la-porn-industry-20140806-story.html>

Proposed New Law

Proposition 60 would impose a number of new statewide regulations on the pornographic film industry. Among other provisions, it would require:

- performers in adult films to use condoms and other protective safety measures during filming of pornographic films.
- producers of adult films to pay for performer vaccination, testing, and medical examinations related to sexually transmitted infections.
- producers to obtain a state health license from the California Division of Occupational Safety and Health at the beginning of filming and post a notice of the condom requirement at film sites.

Proposition 60 exposes various parties to liability, including producers, certain distributors, performers (if they have a financial interest in the violating film), and talent agents who knowingly refer performers to noncomplying producers. Additionally, the proposition permits performers to seek damages through civil lawsuits if producers violate the provisions of the proposition.

If Proposition 60 passes, state officials, performers, and any state residents would be allowed to report violations to Cal/OSHA. Cal/OSHA then has 21 days to investigate the report and then decide whether or not to take administrative or civil action against the alleged violating parties. If Cal/OSHA declines to pursue administrative or civil action, or does not respond to the complaint within 21 days, the person filing the complaint may file a civil action. The State of California will receive 75 percent of any penalties recovered from this civil action and the plaintiff will receive 25 percent. For a defendant to recover attorney fees from a plaintiff, the defendant must prove the plaintiff's actions in pursuing a civil suit were in bad faith or frivolous.

Fiscal Impact

The Legislative Analyst estimates that Prop. 60 would reduce state and local tax revenue by millions or tens of millions of dollars per year, and would likely increase state costs by a few million dollars annually to administer the law.

While Prop. 60 stipulates that a fee, of \$100 initially and amendable by the California Occupational Safety and Health Standards Board, would be assessed for a state health license, the proposition stipulates that no revenue from such fees can be used to finance the administration and application of the law.

Supporters

The AIDS Healthcare Foundation, led by President Michael Weinstein, and For Adult Industry Responsibility (FAIR), are the proposition's main proponents. These two organizations contributed \$2.8 million in support of the measure as of September 2016.

Arguments of Supporters

- The use of condoms and other safe sex measures are necessary in the adult film industry to curb the widespread transmission of sexually transmitted infections, including HIV/AIDS, which qualify as an occupational hazard to performers and a threat to public health.
- The adult film industry puts performers at a heightened risk for contracting sexually transmitting infections by opposing and preventing the use of safe sex measures during filming. Performers unfairly bear the costs associated with testing, vaccinations, and other medical expenses to protect their safety.

Opponents

The Free Speech Coalition, an organization representing the pornography industry, and Californians Against Worker Harassment, a group of various performers, public health advocates and businesses, oppose the measure.

Other opponents include:

- California Democratic Party
- California Republican Party
- AIDS Project Los Angeles
- Los Angeles LGBT Center
- San Francisco AIDS Foundation
- San Francisco Supervisor Scott Wiener

Arguments of Opponents

- Imposing these regulations will drive the adult film industry underground, where performers have fewer resources and are more vulnerable to threats against personal safety in ways beyond sexually transmitted diseases. The adult film industry will relocate filming to other states where less public health resources and infrastructure are available than in California.

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- These regulations will result in reduced tax revenues of millions to tens of millions of dollars per year due to movement of adult film companies out of state or underground, while simultaneously creating new costs of millions of dollars per year to administer and enforce the law. This loss of funding could backfire, reducing the amount of funding available for public health and safety programs.
- Performers already have a system in place of periodic testing for sexually transmitted diseases that provides sufficient protection from contracting STIs.
- The law's enforcement mechanism makes performers, producers, and other adult film industry employees vulnerable to potentially numerous lawsuits from anyone who is a California resident, even when Cal/OSHA decides to not pursue administrative action. Because of the strict language of the bill, it may be difficult for defendants to recoup costs associated with mounting a legal defense even if the court decides in their favor.

Conclusion

Voting Yes on Proposition 60 would impose new regulations on the adult film industry. Performers would be required to use condoms and other protective measures during filming of pornographic films. Producers would be required to pay for testing, vaccinations, and medical examinations of performers prior to filming, and be required to apply for a state health license to make a pornographic film. Any California resident would be able to report violations to Cal/OSHA and pursue civil actions if Cal/OSHA fails to respond or pursue administrative action within 21 days.

Voting No on Proposition 60 would not impose any new regulations on the adult film industry. Except as required by municipal or county regulations, performers would not be required to use condoms in pornographic films and producers would not be required to pay for testing, vaccinations, and medical examinations for performers, and would not be required to apply for a state health license to make a pornographic film. California residents would not be able to report violations to Cal/OSHA.

For more information on Proposition 60, visit:

www.roseinstitute.org

www.voteyesprop60.com

www.dontharassca.com