
SENATE BILL No. 183

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4-18; IC 32-30-7-1.

Synopsis: Sexually oriented businesses. Defines "sexually oriented business". Prohibits the sale or use of alcohol at a sexually oriented business. Establishes certain requirements concerning persons who own a sexually oriented business, and prohibits the establishment of a sexually oriented business in certain locations. Provides that a person less than 18 years of age may not enter a sexually oriented business, prohibits an employee who is regularly in a state of seminudity from touching a patron, and establishes requirements concerning the design, size, furnishings, and hours of operation of a sexually oriented business. Specifies that a sexually oriented business that repeatedly violates certain requirements is an indecent nuisance and is subject to abatement in the same manner as other indecent nuisances.

Effective: July 1, 2012.

Banks, Kruse

January 4, 2012, read first time and referred to Committee on Judiciary.

C
O
P
Y



Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

C
o
p
y

SENATE BILL No. 183



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4-18 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]:

Chapter 18. Sexually Oriented Businesses

Sec. 1. The following definitions apply throughout this chapter:

6 (1) "Adult arcade" means any place to which the public is
7 permitted or invited in which coin operated or slug operated
8 or electronically, electrically, or mechanically controlled still
9 or motion picture machines, projectors, or other
10 image-producing devices are regularly maintained to show
11 images to five (5) or fewer persons per machine at any one (1)
12 time, and where the images are characterized by their
13 emphasis upon matter exhibiting specified sexual activities or
14 specified anatomical areas.

15 (2) "Adult books or videos" means:
16 (A) books, magazines, periodicals, or other printed matter;
17 or



- 1 (B) photographs, films, motion pictures, video cassettes,
 2 compact discs, digital video discs, slides, or other visual
 3 representations;
 4 that are characterized by their emphasis upon the display of
 5 specified sexual activities or specified anatomical areas.
 6 (3) "Adult bookstore" or "adult video store" means a
 7 commercial establishment in which adult books or videos
 8 form at least thirty percent (30%) of:
 9 (A) the establishment's displayed merchandise;
 10 (B) the wholesale value of the establishment's displayed
 11 merchandise;
 12 (C) the retail value of the establishment's displayed
 13 merchandise;
 14 (D) the establishment's total revenue; or
 15 (E) the establishment's interior business space.
 16 The term includes a commercial establishment that operates
 17 or maintains an adult arcade.
 18 (4) "Adult cabaret" means a night club, bar, juice bar,
 19 restaurant, bottle club, or other commercial establishment,
 20 regardless of whether alcoholic beverages are served, that
 21 regularly features persons who appear seminude.
 22 (5) "Adult motion picture theater" means a commercial
 23 establishment where films, motion pictures, video cassettes,
 24 DVDs, slides, digital images, or similar photographic
 25 reproductions, that are characterized by their emphasis upon
 26 the display of specified sexual activities or specified
 27 anatomical areas, are regularly shown to more than five (5)
 28 persons.
 29 (6) "Characterized by" means describing the essential
 30 character or dominant theme of an item.
 31 (7) "Employ", "employee", or "employment" refers to any
 32 person who performs any service on the premises of a sexually
 33 oriented business, on a full-time, part-time, or contract basis,
 34 whether or not the person is denominated as an employee,
 35 independent contractor, agent, lessee, or otherwise. The term
 36 does not include a person exclusively on the premises for
 37 repair or maintenance of the premises or for the delivery of
 38 goods to the premises.
 39 (8) "Establish" or "establishment" includes:
 40 (A) the opening of any sexually oriented business as a new
 41 business;
 42 (B) the conversion of an existing business, whether or not

C
O
P
Y

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- a sexually oriented business, into a sexually oriented business; or
- (C) the addition of a sexually oriented business to any other existing sexually oriented business.
- (9) "Influential interest" means any of the following:
 - (A) the actual power to operate a sexually oriented business or control the operation, management, or policies of a sexually oriented business or legal entity that operates the sexually oriented business;
 - (B) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business; or
 - (C) holding an office, such as president, vice president, secretary, treasurer, managing member, or managing director, in a legal entity that operates the sexually oriented business.
- (10) "Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft or cleavage, with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola.
- (11) "Operator" means any person on the premises of a sexually oriented business who causes the business to function, puts or keeps in operation the business, or is authorized to manage the business or exercise overall operational control of the business premises. A person may operate or cause a sexually oriented business to be operated even if the person is not an owner, part owner, or licensee of the business.
- (12) "Premises" means the real property upon which a sexually oriented business is located, and includes buildings, grounds, private walkways, and parking areas.
- (13) "Regularly" means the consistent and repeated doing of an act on an ongoing basis.
- (14) "Semi-nude" or "state of semi-nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at this point, or the showing of the male or female buttocks. The term includes showing the lower part of the human female breast, but does not include any part of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel, if the areola is not exposed in whole or in part.

C
o
p
y



1 (15) "Semi-nude model studio" means a place where persons
 2 regularly appear in a state of semi-nudity for money or any
 3 form of consideration in order to be observed, sketched,
 4 drawn, painted, sculptured, photographed, or similarly
 5 depicted by other persons. The term does not apply to any
 6 place where persons appearing in a state of semi-nudity do so
 7 in a modeling class operated:

8 (A) by a college, junior college, or university supported
 9 entirely or partly by taxation;

10 (B) by a private college or university that maintains and
 11 operates educational programs in which credits are
 12 transferable to a college, junior college, or university
 13 supported entirely or partly by taxation; or

14 (C) in a structure:

15 (i) that has no sign visible from the exterior of the
 16 structure and no other advertising that indicates a
 17 semi-nude person is available for viewing; and

18 (ii) where, in order to participate in a class, a student
 19 must enroll at least three (3) days in advance of the class.

20 (16) "Sexual encounter center" means a business or
 21 commercial enterprise that, as one (1) of its principal
 22 purposes, purports to offer, for any form of consideration,
 23 physical contact in the form of wrestling or tumbling between
 24 two (2) or more persons when one (1) or more of the persons
 25 is semi-nude.

26 (17) "Sexually oriented business" means an adult bookstore or
 27 adult video store, an adult cabaret, an adult motion picture
 28 theater, a semi-nude model studio, or a sexual encounter
 29 center.

30 (18) "Specified anatomical areas" means the:

31 (A) less than completely and opaquely covered human
 32 genitals, pubic region, buttocks, or female breast below a
 33 point immediately above the top of the areola; or

34 (B) human male genitals in a discernibly turgid state, even
 35 if completely and opaquely covered.

36 (19) "Specified criminal act" means any of the following
 37 offenses (including an attempt or conspiracy to commit the
 38 offense) if less than eight (8) years have elapsed since the date
 39 of conviction or the date of release from confinement for the
 40 conviction, whichever is later:

41 (A) A sex offense (as defined in IC 11-8-8-5.2).

42 (B) Prostitution (IC 35-45-4-2).

C
o
p
y



- 1 (C) Patronizing a prostitute (IC 35-45-4-3).
- 2 (D) Promoting prostitution (IC 35-45-4-4).
- 3 (E) Human trafficking (IC 35-42-3.5-1).
- 4 (F) An offense relating to obscenity or distributing
- 5 material harmful to minors under IC 35-49-3.
- 6 (G) Money laundering (IC 35-45-15-5).
- 7 (H) An offense relating to the failure to pay a tax.
- 8 (I) An offense committed in another jurisdiction that is
- 9 substantially similar to an offense described in this
- 10 subdivision.
- 11 (20) "Specified sexual activity" means any of the following
- 12 acts:
- 13 (A) Intercourse, oral copulation, masturbation, or sodomy.
- 14 (B) Excretory functions as a part of or in connection with
- 15 any of the activities described in clause (A).
- 16 (21) "Viewing room" means the room, booth, or area where
- 17 a patron of a sexually oriented business would ordinarily be
- 18 positioned while watching a film, video cassette, DVD, or
- 19 other video or digital reproduction.
- 20 Sec. 2. (a) A person may not establish a sexually oriented
- 21 business within one thousand (1,000) feet of a preexisting primary
- 22 or secondary school, house of worship, state licensed day care
- 23 facility, public library, public park, residence, or other sexually
- 24 oriented business.
- 25 (b) In determining whether a sexually oriented business is
- 26 located within one thousand (1,000) feet of a location described in
- 27 subsection (a), measurement must be made in a straight line,
- 28 without regard to intervening structures or objects, from the
- 29 closest part of the parcel containing the sexually oriented business
- 30 to the closest part of the parcel containing the preexisting primary
- 31 or secondary school, house of worship, state licensed day care
- 32 facility, public library, public park, residence, or other sexually
- 33 oriented business.
- 34 Sec. 3. A person may not establish a sexually oriented business
- 35 if a person with an influential interest in the sexually oriented
- 36 business has been convicted of or pled guilty or nolo contendere to
- 37 a specified criminal act.
- 38 Sec. 4. A person who knowingly or intentionally appears in a
- 39 state of nudity in a sexually oriented business commits performing
- 40 an unlawful nude act, a Class C misdemeanor.
- 41 Sec. 5. (a) This section does not apply to an employee who
- 42 appears in a seminude condition in an adult oriented business if the

COPY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

employee is:

- (1) on a stage raised at least eighteen (18) inches from the floor;
- (2) in a room at least six hundred (600) square feet in size; and
- (3) at least six (6) feet away from any patron or customer.

(b) A person who knowingly or intentionally appears in a seminude condition in a sexually oriented business commits performing an unlawful seminude act, a Class C misdemeanor.

Sec. 6. An employee who regularly appears in a seminude condition in a sexually oriented business who knowingly or intentionally touches a customer or the clothing of a customer while on the premises of the sexually oriented business commits unlawful touching at a sexually oriented business, a Class C misdemeanor.

Sec. 7. A person who knowingly, intentionally, or recklessly permits a person less than eighteen (18) years of age to be on the premises of a sexually oriented business commits permitting an underage person access to a sexually oriented business, a Class C misdemeanor.

Sec. 8. A sexually oriented business that exhibits on the premises, through any mechanical, electronic, or digital image producing device, a film, video cassette, DVD, or other video reproduction, characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

- (1) The interior of the premises must be configured so that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose.
- (2) An operator's station may not exceed thirty-two (32) square feet of floor area.
- (3) If the premises has two (2) or more operator's stations designated, the interior of the premises must be configured so that there is an unobstructed view of each area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose from at least one (1) of the operator's stations.
- (4) The view required under this subsection must be by direct line of sight from the operator's station.
- (5) It is the duty of the operator to ensure that at least one (1)

C
o
p
y



1 employee is on duty and situated in an operator's station at all
 2 times that any patron is on the part of the premises monitored
 3 by the operator's station.

4 (6) The operator and any employees present on the premises
 5 shall ensure that the view area specified in this section
 6 remains unobstructed by any doors, curtains, walls,
 7 merchandise, display racks, or other materials or enclosures
 8 at all times that any patron is present on the premises.

9 Sec. 9. (a) Notwithstanding sections 5 and 8 of this chapter, a
 10 sexually oriented business that does not have a stage or interior
 11 configuration that meets the minimum requirements of sections 5
 12 and 8 of this chapter is not required to comply with the stage and
 13 interior configuration requirements of these sections until January
 14 1, 2013. However, any employee who appears within view of any
 15 patron in a semi-nude condition shall remain, while seminude, at
 16 least six (6) feet away from any patron or customer.

17 (b) This section expires January 2, 2013.

18 Sec. 10. An operator may not allow or permit a sexually
 19 oriented business to be or remain open after 12 a.m. and before 6
 20 a.m. on any day.

21 Sec. 11. A person who recklessly, knowingly, or intentionally
 22 sells, furnishes, barter, uses, or consumes an alcoholic beverage on
 23 the premises of a sexually oriented business commits use of alcohol
 24 at a sexually oriented business, a Class C misdemeanor.

25 Sec. 12. (a) A person who knowingly or intentionally violates
 26 section 2, 3, 4, 8, or 10 of this chapter commits a Class C
 27 misdemeanor.

28 (b) Each:

29 (1) day that a violation described in subsection (a) is
 30 permitted to exist or occur; and

31 (2) separate occurrence of a violation described in subsection
 32 (a);

33 constitutes a separate offense.

34 Sec. 13. Any premises, building, dwelling, or other structure in
 35 which a sexually oriented business is repeatedly operated or
 36 maintained in violation of this chapter constitutes an indecent
 37 nuisance and is subject to abatement in accordance with
 38 IC 32-30-7. This section does not prohibit the state from employing
 39 any other remedy available to prevent or remedy a violation of this
 40 chapter.

41 Sec. 14. (a) This chapter does not preempt or otherwise prevent
 42 a political subdivision from maintaining, enacting, or enforcing any

C
O
P
Y



1 local ordinance, rule, regulation, resolution, or similar law
2 concerning the regulation of sexually oriented businesses or similar
3 adult oriented businesses that is stricter than but not inconsistent
4 with this chapter.

5 (b) A political subdivision may maintain, enact, and enforce a
6 local ordinance, rule, regulation, resolution, or other similar law
7 concerning the regulation of sexually oriented businesses or similar
8 adult oriented businesses that is the same as or stricter than but
9 not inconsistent with this chapter.

10 SECTION 2. IC 32-30-7-1 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. As used in this
12 chapter, "indecent nuisance" means a:

13 (1) place in or upon which prostitution (as described in
14 IC 35-45-4) is conducted, permitted, continued, or exists;

15 (2) public place in or upon which deviate sexual conduct (as
16 defined in IC 35-41-1-9) or sexual intercourse (as defined in
17 IC 35-41-1-26) is conducted, permitted, continued, or exists;

18 or
19 (3) public place in or upon which the fondling of the genitals of
20 a person is conducted, permitted, continued, or exists; or

21 (4) sexually oriented business (as defined in IC 24-4-18-1(17))
22 that is repeatedly operated or maintained in violation of
23 IC 24-4-18;

24 is conducted, permitted, continued, or exists; and the personal property
25 and contents used in conducting and maintaining the place for such a
26 the purpose described in this section.

C
o
p
y

