



January 20, 2022

HOUSE BILL No. 1122

DIGEST OF HB 1122 (Updated January 19, 2022 12:53 pm - DI 137)

Citations Affected: IC 24-4; IC 35-52.

Synopsis: Regulation of sexually oriented businesses. Provides that a sexually oriented business may not operate within 1,000 feet of specified facilities that cater to minors. Allows preexisting sexually oriented businesses until July 1, 2025, to conform their operation to the statute. Establishes a civil enforcement mechanism. Repeals the existing law concerning sexually explicit materials. Makes conforming amendments.

Effective: July 1, 2022.

Speedy, Morris, Hamilton

January 4, 2022, read first time and referred to Committee on Local Government.
January 20, 2022, amended, reported — Do Pass.

HB 1122—LS 7114/DI 106



January 20, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1122

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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

- 1 SECTION 1. IC 24-4-16.4 IS REPEALED [EFFECTIVE JULY 1,
2 2022]. (Sexually Explicit Materials).
- 3 SECTION 2. IC 24-4-16.5 IS ADDED TO THE INDIANA CODE
4 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2022]:
- 6 **Chapter 16.5. Sexually Oriented Businesses**
- 7 **Sec. 1. (a) It is the purpose of this chapter to regulate the**
8 **location of sexually oriented businesses in order to promote the**
9 **health, safety, and general welfare of the citizens of the state and**
10 **to establish reasonable regulations to abate and prevent the**
11 **deleterious secondary effects of sexually oriented businesses near**
12 **sensitive land uses and locations that cater to minors. The**
13 **provisions of this chapter do not have the purpose or the effect of**
14 **imposing a limitation or restriction on the content or reasonable**
15 **access to any communicative materials, including sexually oriented**
16 **materials. Similarly, it is not the intent or effect of this chapter to**
17 **restrict or deny access by adults to sexually oriented materials**

HB 1122—LS 7114/DI 106



1 protected by the First Amendment to the Constitution of the
2 United States or by Article 1, Section 9 of the Constitution of the
3 State of Indiana, to deny access by the distributors and exhibitors
4 of sexually oriented entertainment to their intended market, or to
5 condone or legitimize the distribution of obscene material. The
6 provisions of this chapter supplement and do not preempt any local
7 government regulations of sexually oriented businesses.

8 (b) Based on evidence of the adverse secondary effects of
9 sexually oriented businesses presented to the general assembly, and
10 on findings, interpretations, and narrowing constructions
11 incorporated in the cases and reports provided to the general
12 assembly, the general assembly finds the following:

13 (1) Sexually oriented businesses, as a category of commercial
14 uses, are associated with a wide variety of adverse secondary
15 effects including personal and property crimes, human
16 trafficking, prostitution, potential spread of disease, lewdness,
17 public indecency, obscenity, illicit drug use and drug
18 trafficking, negative impacts on surrounding properties,
19 urban blight, litter, and sexual assault and exploitation.

20 (2) Sexually oriented businesses should be separated from
21 sensitive land uses to minimize the impact of their secondary
22 effects upon these uses and should be separated from other
23 sexually oriented businesses to minimize the secondary effects
24 associated with the uses and to prevent an unnecessary
25 concentration of sexually oriented businesses in one area.

26 (3) Each negative secondary effect described in this section
27 constitutes a harm which the state has a substantial
28 governmental interest in preventing and abating. The state's
29 interest in regulating sexually oriented businesses extends to
30 preventing future secondary effects of both current and
31 future sexually oriented businesses that may locate in the
32 state. The general assembly finds that the cases and
33 documentation relied on in this chapter are relevant to these
34 secondary effects.

35 Sec. 2. The following definitions apply throughout this chapter:

36 (1) "Adult arcade" means a commercial establishment to
37 which the public is permitted or invited that maintains booths
38 or rooms smaller than one hundred (100) square feet in which
39 image producing devices are regularly maintained to show
40 images characterized by their emphasis upon matter
41 exhibiting specified sexual activities or specified anatomical
42 areas.



(2) "Adult bookstore" means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration:

(A) books, magazines, periodicals or other printed matter; or

(B) photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations;

which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.

(3) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live nude or seminude conduct.

(4) "Adult motion picture theater" means a commercial establishment to which the public is permitted or invited that maintains viewing rooms that are one hundred (100) square feet or larger in which films or videos characterized by their emphasis upon specified sexual activities or specified anatomical areas are regularly shown.

(5) "Characterized by" means describing the essential character or quality of an item.

(6) "Children's amusement establishment" means an amusement park, trampoline park, inflatable play facility, laser tag facility, go-kart track, skating park or skating rink, video game arcade, or any commercial establishment primarily dedicated to providing entertainment activities that cater to minors.

(7) "Floor space" means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms. The term includes aisles and walkways used for access or display, as well as cashier stations where items are displayed, sold, or rented.

(8) "Influential interest" means the actual power to control or influence the operation, management, or policies of a business or legal entity which operates the business. The term includes an individual who:

(A) is the onsite general manager of the business;

(B) owns a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business; or

(C) is an officer in a legal entity that operates the business.

(9) "Nudity" or "nude conduct" means the showing of the



human male or female genitals, pubic area, vulva, or anus 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 and areola. A covering is not fully opaque if it is flesh colored, consists of a substance that can be washed or peeled off the skin (such as paint, makeup, or latex), or simulates the appearance of the anatomical area that it covers.

(10) "Operate" means to cause to function or to put or keep in a state of doing business. A person with an influential interest in a business operates the business.

(11) "Regional shopping mall" means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with onsite parking provided around the perimeter of the shopping center and that is at least forty (40) acres in size and flanked by two (2) or more large anchor stores, such as department stores. The common walkway or mall is enclosed, climate controlled, and lighted, with an inward orientation of the stores facing the walkway.

(12) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(13) "Principal business activity" means, with respect to an adult bookstore, that:

(A) at least thirty-five percent (35%) of the establishment's displayed merchandise consists of:

- (i) books, magazines, periodicals, or other printed matter; or
- (ii) photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations;

(B) at least thirty-five percent (35%) of the establishment's revenues derive from the sale or rental, for any form of consideration, of:

- (i) books, magazines, periodicals, or other printed matter; or
- (ii) photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations;

(C) the establishment maintains at least thirty-five percent (35%) of its floor space for the display, sale, or rental of:

- (i) books, magazines, periodicals, or other printed



1 matter; or

2 (ii) photographs, films, motion pictures, video cassettes,
3 compact discs, digital video discs, slides, or other visual
4 representations;

5 (D) the establishment maintains at least five hundred (500)
6 square feet of its floor space for the display, sale, or rental
7 of:

8 (i) books, magazines, periodicals, or other printed
9 matter; or

10 (ii) photographs, films, motion pictures, video cassettes,
11 compact discs, digital video discs, slides, or other visual
12 representations; or

13 (E) the establishment regularly offers for sale or rental at
14 least one thousand (1,000):

15 (i) books, magazines, periodicals, or other printed
16 matter; or

17 (ii) photographs, films, motion pictures, video cassettes,
18 compact discs, digital video discs, slides, or other visual
19 representations;

20 which are characterized by their emphasis upon the display
21 of specified sexual activities or specified anatomical areas.

22 (14) "Regularly" means the consistent and repeated doing of
23 an act on an ongoing basis.

24 (15) "Seminude" or "seminudity" means the showing of the
25 female breast below a horizontal line across the top of the
26 areola and extending across the width of the breast at that
27 point, or the showing of the male or female buttocks. The
28 term includes the lower portion of the human female breast,
29 but does not include any portion of the cleavage of the human
30 female breasts exhibited by a bikini, dress, blouse, shirt,
31 leotard, or similar wearing apparel provided the areola is not
32 exposed in whole or in part.

33 (16) "Sexual device" means any three (3) dimensional object
34 designed for stimulation of the male or female human
35 genitals, anus, buttocks, or nipple or for sado-masochistic use
36 or abuse of oneself or others and includes devices commonly
37 known as dildos, vibrators, penis pumps, cock rings, anal
38 beads, butt plugs, nipple clamps, and physical representations
39 of the human genital organs. The term does not include a
40 device primarily designed for protection against sexually
41 transmitted diseases or for preventing pregnancy.

42 (17) "Sexual device shop" means a commercial establishment:



(A) where more than one hundred (100) sexual devices are regularly made available for sale or rental; or

(B) where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices, such as by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices.

The term does not include an establishment located within a regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

(18) "Sexually oriented business" means an adult arcade, an adult bookstore, an adult cabaret, an adult motion picture theater, or a sexual device shop.

(19) "Specified anatomical areas" means:

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

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

(20) "Specified sexual activity" means any of the following:

(A) Intercourse, oral copulation, masturbation, or sodomy.

(B) Excretory functions as a part of or in connection with any of the activities described clause (A).

(21) "Viewing room" means the room or booth where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image producing device.

Sec. 3. (a) Except as provided in subsection (c), a person may not operate a sexually oriented business within one thousand (1,000) feet of property occupied by a child care center (as defined in IC 20-27-9-12), public or private school principally attended by students under eighteen (18) years of age, YMCA or YWCA facility, Boys and Girls Club facility, public swimming pool, public park, playground open to the public, youth sports facility, or



children's amusement establishment.

(b) In determining the distance under subsection (a), the measurement shall be made in a straight line from the closest part of any structure occupied by the sexually oriented business to the closest property line of a facility listed in subsection (a). If a facility listed in subsection (a) is located in a multitenant development, the distance shall be measured to the closest part of the tenant space occupied by that facility rather than to the property line of the entire development.

(c) Except as provided in section 5 of this chapter, this section does not apply to a sexually oriented business that was lawfully established and legally operating before July 1, 2022, even if the sexually oriented business encroaches on the one thousand (1,000) foot limit due to an expansion that occurs after June 30, 2022.

Sec. 4. (a) The attorney general, the county prosecuting attorney, a local government unit, or a resident of the county in which a violation of this chapter occurs may bring an action to enforce a violation of section 3 of this chapter in a circuit or superior court in the county.

(b) If the plaintiff proves by a preponderance of the evidence that a person has violated section 3 of this chapter, the court shall:

(1) enjoin the defendant from continuing to violate this chapter;

(2) if the plaintiff proves by a preponderance of the evidence that the person knowingly, intentionally, or recklessly violated section 3 of this chapter, award liquidated damages of seven thousand five hundred dollars (\$7,500) for each day of the violation to the plaintiff;

(3) order any person who has violated this chapter to pay the reasonable attorney's fees, costs, and expenses of investigation and prosecution incurred by the plaintiff; and

(4) award any other relief that the court considers proper.

(c) In order to obtain injunctive relief, the party bringing an action to enforce this chapter is not required to establish irreparable harm but only a violation of this chapter.

(d) If the plaintiff proves by a preponderance of the evidence that a person enjoined under subsection (b) has knowingly, intentionally, or recklessly violated the injunction, the court shall:

(1) order the person to pay liquidated damages of fifteen thousand dollars (\$15,000) for each day of violation to the prevailing party;

(2) order a person who has violated the injunction to pay the



1 reasonable attorney's fees, costs, and expenses of investigation
 2 and prosecution of the violation of the injunction; and
 3 (3) award any other relief that the court considers proper.

4 Sec. 5. (a) A commercial establishment that was lawfully
 5 established and legally operating as a sexually oriented business
 6 before July 1, 2022, may continue operating as a sexually oriented
 7 business in a location that does not conform to section 3 of this
 8 chapter until June 30, 2025, in order to make a reasonable
 9 recoupment of its investment in the location that was made before
 10 July 1, 2022.

11 (b) After June 30, 2025, a commercial establishment that was
 12 lawfully established and legally operated as a sexually oriented
 13 business before the effective date of this section shall comply with
 14 section 3 of this chapter.

15 Sec. 6. Local government units may continue to enforce
 16 preexisting regulations, and adopt new regulations, concerning the
 17 licensing, zoning, location, and operation of sexually oriented
 18 businesses and similar sexually oriented enterprises within the
 19 unit's jurisdiction, including regulations requiring sexually
 20 oriented businesses that do not conform to the local government's
 21 location regulations to conform to such regulations after a
 22 reasonable period of time. This chapter does not preempt any
 23 ordinance, resolution, or regulation of any local government unit.

24 SECTION 3. IC 35-52-24-19 IS REPEALED [EFFECTIVE JULY
 25 1, 2022]. Sec. 19. IC 24-4-16.4-4 defines a crime concerning regulated
 26 businesses.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1122, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 42, delete "However, an establishment is not an adult arcade solely".

Page 3, delete lines 1 through 2.

Page 3, delete lines 13 through 15.

Page 3, line 24, delete "However, an".

Page 3, delete lines 25 through 27.

Page 7, line 7, after "pool," insert "**public park,**".

Page 8, line 25, after "licensing," insert "**zoning,**".

Page 8, line 30, after "time." insert "**This chapter does not preempt any ordinance, resolution, or regulation of any local government unit.**".

and when so amended that said bill do pass.

(Reference is to HB 1122 as introduced.)

MAY

Committee Vote: yeas 11, nays 0.

