

# HOUSE BILL No. 1122

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4; IC 35-52-24-19.

**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.

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## Speedy

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January 4, 2022, read first time and referred to Committee on Local Government.

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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 IC 24-4-16.4 IS REPEALED [EFFECTIVE JULY 1,  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**



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. However, an establishment is not an adult arcade solely



- 1 because it shows, sells, or rents materials rated NC-17 or R by  
 2 the Motion Picture Association of America.
- 3 (2) "Adult bookstore" means a commercial establishment  
 4 which, as one of its principal business activities, offers for sale  
 5 or rental for any form of consideration:
- 6 (A) books, magazines, periodicals or other printed matter;  
 7 or
- 8 (B) photographs, films, motion pictures, video cassettes,  
 9 compact discs, digital video discs, slides, or other visual  
 10 representations;
- 11 which are characterized by their emphasis upon the display  
 12 of specified sexual activities or specified anatomical areas.  
 13 However, an establishment is not an adult bookstore solely  
 14 because it shows, sells, or rents materials rated NC-17 or R by  
 15 the Motion Picture Association of America.
- 16 (3) "Adult cabaret" means a nightclub, bar, juice bar,  
 17 restaurant, bottle club, or similar commercial establishment  
 18 that regularly offers live nude or seminude conduct.
- 19 (4) "Adult motion picture theater" means a commercial  
 20 establishment to which the public is permitted or invited that  
 21 maintains viewing rooms that are one hundred (100) square  
 22 feet or larger in which films or videos characterized by their  
 23 emphasis upon specified sexual activities or specified  
 24 anatomical areas are regularly shown. However, an  
 25 establishment is not an adult motion picture theater solely  
 26 because it shows, sells, or rents materials rated NC-17 or R by  
 27 the Motion Picture Association of America.
- 28 (5) "Characterized by" means describing the essential  
 29 character or quality of an item.
- 30 (6) "Children's amusement establishment" means an  
 31 amusement park, trampoline park, inflatable play facility,  
 32 laser tag facility, go-kart track, skating park or skating rink,  
 33 video game arcade, or any commercial establishment  
 34 primarily dedicated to providing entertainment activities that  
 35 cater to minors.
- 36 (7) "Floor space" means the floor area inside an  
 37 establishment that is visible or accessible to patrons for any  
 38 reason, excluding restrooms. The term includes aisles and  
 39 walkways used for access or display, as well as cashier  
 40 stations where items are displayed, sold, or rented.
- 41 (8) "Influential interest" means the actual power to control or  
 42 influence the operation, management, or policies of a business



1 or legal entity which operates the business. The term includes  
2 an individual who:

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

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

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

8 (9) "Nudity" or "nude conduct" means the showing of the  
9 human male or female genitals, pubic area, vulva, or anus  
10 with less than a fully opaque covering, or the showing of the  
11 female breast with less than a fully opaque covering of any  
12 part of the nipple and areola. A covering is not fully opaque  
13 if it is flesh colored, consists of a substance that can be washed  
14 or peeled off the skin (such as paint, makeup, or latex), or  
15 simulates the appearance of the anatomical area that it  
16 covers.

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

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

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

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

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

35 (i) books, magazines, periodicals, or other printed  
36 matter; or

37 (ii) photographs, films, motion pictures, video cassettes,  
38 compact discs, digital video discs, slides, or other visual  
39 representations;

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



- 1 (i) books, magazines, periodicals, or other printed  
 2 matter; or  
 3 (ii) photographs, films, motion pictures, video cassettes,  
 4 compact discs, digital video discs, slides, or other visual  
 5 representations;  
 6 (C) the establishment maintains at least thirty-five percent  
 7 (35%) of its floor space for the display, sale, or rental 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;  
 13 (D) the establishment maintains at least five hundred (500)  
 14 square feet of its floor space for the display, sale, or rental  
 15 of:  
 16 (i) books, magazines, periodicals, or other printed  
 17 matter; or  
 18 (ii) photographs, films, motion pictures, video cassettes,  
 19 compact discs, digital video discs, slides, or other visual  
 20 representations; or  
 21 (E) the establishment regularly offers for sale or rental at  
 22 least one thousand (1,000):  
 23 (i) books, magazines, periodicals, or other printed  
 24 matter; or  
 25 (ii) photographs, films, motion pictures, video cassettes,  
 26 compact discs, digital video discs, slides, or other visual  
 27 representations;  
 28 which are characterized by their emphasis upon the display  
 29 of specified sexual activities or specified anatomical areas.  
 30 (14) "Regularly" means the consistent and repeated doing of  
 31 an act on an ongoing basis.  
 32 (15) "Seminude" or "seminudity" means the showing of the  
 33 female breast below a horizontal line across the top of the  
 34 areola and extending across the width of the breast at that  
 35 point, or the showing of the male or female buttocks. The  
 36 term includes the lower portion of the human female breast,  
 37 but does not include any portion of the cleavage of the human  
 38 female breasts exhibited by a bikini, dress, blouse, shirt,  
 39 leotard, or similar wearing apparel provided the areola is not  
 40 exposed in whole or in part.  
 41 (16) "Sexual device" means any three (3) dimensional object  
 42 designed for stimulation of the male or female human



1           genitals, anus, buttocks, or nipple or for sado-masochistic use  
 2           or abuse of oneself or others and includes devices commonly  
 3           known as dildos, vibrators, penis pumps, cock rings, anal  
 4           beads, butt plugs, nipple clamps, and physical representations  
 5           of the human genital organs. The term does not include a  
 6           device primarily designed for protection against sexually  
 7           transmitted diseases or for preventing pregnancy.

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

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

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

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

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

29           **(19) "Specified anatomical areas" means:**

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

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

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

36                   **(A) Intercourse, oral copulation, masturbation, or**  
 37                   **sodomy.**

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

40           **(21) "Viewing room" means the room or booth where a**  
 41           **patron of a sexually oriented business would ordinarily be**  
 42           **positioned while watching a film, videocassette, digital video**



1 disc, or other video on an image producing device.

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

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

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

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

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

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

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

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

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

41 **(c) In order to obtain injunctive relief, the party bringing a**  
42 **action to enforce this chapter is not required to establish**





1 irreparable harm but only a violation of this chapter.

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

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

8 (2) order a person who has violated the injunction to pay the  
9 reasonable attorney's fees, costs, and expenses of investigation  
10 and prosecution of the violation of the injunction; and

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

12 Sec. 5. (a) A commercial establishment that was lawfully  
13 established and legally operating as a sexually oriented business  
14 before July 1, 2022, may continue operating as a sexually oriented  
15 business in a location that does not conform to section 3 of this  
16 chapter until June 30, 2025, in order to make a reasonable  
17 recoupment of its investment in the location that was made before  
18 July 1, 2022.

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

23 Sec. 6. Local government units may continue to enforce  
24 preexisting regulations, and adopt new regulations, concerning the  
25 licensing, location, and operation of sexually oriented businesses  
26 and similar sexually oriented enterprises within the unit's  
27 jurisdiction, including regulations requiring sexually oriented  
28 businesses that do not conform to the local government's location  
29 regulations to conform to such regulations after a reasonable  
30 period of time.

31 SECTION 3. IC 35-52-24-19 IS REPEALED [EFFECTIVE JULY  
32 1, 2022]. Sec. 19. IC 24-4-16.4-4 defines a crime concerning regulated  
33 businesses:

