

HOUSE BILL No. 1122

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.

Speedy

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



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 IC 24-4-16.4 IS REPEALED [EFFECTIVE JULY 1,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

