

HOUSE BILL No. 1503

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. Exempts pre-existing businesses that have been in continuous operation. Establishes a civil enforcement mechanism. Repeals the existing law concerning sexually explicit materials. Makes conforming amendments.

Effective: July 1, 2023.

Speedy

January 17, 2023, read first time and referred to Committee on Local Government.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1503

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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 IC 24-4-16.4 IS REPEALED [EFFECTIVE JULY 1,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 2023]. (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, 2023]:
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 (1) area.

26 (3) Each negative secondary effect described in this section
 27 constitutes a harm that 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.



- 1 **(2) "Adult bookstore" means a commercial establishment**
 2 **which, as one (1) of its principal business activities, offers for**
 3 **sale or rental for any form of consideration:**
 4 **(A) books, magazines, periodicals, or other printed matter;**
 5 **or**
 6 **(B) photographs, films, motion pictures, video cassettes,**
 7 **compact discs, digital video discs, slides, or other visual**
 8 **representations;**
 9 **which are characterized by their emphasis upon the display**
 10 **of specified sexual activities or specified anatomical areas.**
 11 **(3) "Adult cabaret" means a nightclub, bar, juice bar,**
 12 **restaurant, bottle club, or similar commercial establishment**
 13 **that regularly offers live nude or seminude conduct.**
 14 **(4) "Adult motion picture theater" means a commercial**
 15 **establishment to which the public is permitted or invited that**
 16 **maintains viewing rooms that are one hundred (100) square**
 17 **feet or larger in which films or videos characterized by their**
 18 **emphasis upon specified sexual activities or specified**
 19 **anatomical areas are regularly shown.**
 20 **(5) "Characterized by" means describing the essential**
 21 **character or quality of an item.**
 22 **(6) "Children's amusement establishment" means an**
 23 **amusement park, trampoline park, inflatable play facility,**
 24 **laser tag facility, go-kart track, skating park or skating rink,**
 25 **video game arcade, or any commercial establishment**
 26 **primarily dedicated to providing entertainment activities that**
 27 **cater to minors.**
 28 **(7) "Designated facility" means a child care center (as defined**
 29 **in IC 20-27-9-12), public or private school principally**
 30 **attended by students under eighteen (18) years of age, YMCA**
 31 **or YWCA facility, Boys and Girls Club facility, public**
 32 **swimming pool, public park, playground open to the public,**
 33 **youth sports facility, or children's amusement establishment.**
 34 **(8) "Floor space" means the floor area inside an**
 35 **establishment that is visible or accessible to patrons for any**
 36 **reason, excluding restrooms. The term includes aisles and**
 37 **walkways used for access or display, as well as cashier**
 38 **stations where items are displayed, sold, or rented.**
 39 **(9) "Influential interest" means the actual power to control or**
 40 **influence the operation, management, or policies of a business**
 41 **or legal entity that operates the business. The term includes**
 42 **an individual who:**



- 1 **(A) is the onsite general manager of the business;**
 2 **(B) owns a financial interest of thirty percent (30%) or**
 3 **more of a business or of any class of voting securities of a**
 4 **business; or**
 5 **(C) is an officer in a legal entity that operates the business.**
 6 **(10) "Nudity" or "nude conduct" means the showing of the**
 7 **human male or female genitals, pubic area, vulva, or anus**
 8 **with less than a fully opaque covering, or the showing of the**
 9 **female breast with less than a fully opaque covering of any**
 10 **part of the nipple and areola. A covering is not fully opaque**
 11 **if it is flesh colored, consists of a substance that can be washed**
 12 **or peeled off the skin (such as paint, makeup, or latex), or**
 13 **simulates the appearance of the anatomical area that it**
 14 **covers.**
 15 **(11) "Operate" means to cause to function or to put or keep**
 16 **in a state of doing business. A person with an influential**
 17 **interest in a business operates the business.**
 18 **(12) "Regional shopping mall" means a group of retail and**
 19 **other commercial establishments that is planned, developed,**
 20 **and managed as a single property, with onsite parking**
 21 **provided around the perimeter of the shopping center and**
 22 **that is at least forty (40) acres in size and flanked by two (2)**
 23 **or more large anchor stores, such as department stores. The**
 24 **common walkway or mall is enclosed, climate controlled, and**
 25 **lighted, with an inward orientation of the stores facing the**
 26 **walkway.**
 27 **(13) "Person" means an individual, proprietorship,**
 28 **partnership, corporation, association, or other legal entity.**
 29 **(14) "Principal business activity" means, with respect to an**
 30 **adult bookstore, that:**
 31 **(A) at least thirty-five percent (35%) of the establishment's**
 32 **displayed merchandise consists of:**
 33 **(i) books, magazines, periodicals, or other printed**
 34 **matter; or**
 35 **(ii) photographs, films, motion pictures, video cassettes,**
 36 **compact discs, digital video discs, slides, or other visual**
 37 **representations;**
 38 **(B) at least thirty-five percent (35%) of the establishment's**
 39 **revenues derive from the sale or rental, for any form of**
 40 **consideration, of:**
 41 **(i) books, magazines, periodicals, or other printed**
 42 **matter; or**



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



1 known as dildos, vibrators, penis pumps, cock rings, anal
 2 beads, butt plugs, nipple clamps, and physical representations
 3 of the human genital organs. The term does not include a
 4 device primarily designed for protection against sexually
 5 transmitted diseases or for preventing pregnancy.

6 (18) "Sexual device shop" means a commercial establishment:

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

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

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

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

27 (20) "Specified anatomical areas" means:

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

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

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

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

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

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

42 Sec. 3. (a) Except as provided in section 5 of this chapter, a



1 person may not operate a sexually oriented business within one
2 thousand (1,000) feet of property occupied by a designated facility.

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

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

16 (b) The plaintiff bears the burden of proof by a preponderance
17 of the evidence that the restriction described in section 3(a) of this
18 chapter applies to the sexually oriented business.

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

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

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

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

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

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

35 (e) If the plaintiff proves by a preponderance of the evidence
36 that a person enjoined under subsection (c) has knowingly,
37 intentionally, or recklessly violated the injunction, the court shall:

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

41 (2) order a person who has violated the injunction to pay the
42 reasonable attorney's fees, costs, and expenses of investigation



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and prosecution of the violation of the injunction; and
 (3) award any other relief that the court considers proper.

Sec. 5. Section 3 of this chapter does not apply to a sexually oriented business that:

(1) was lawfully established and legally operating as a sexually oriented business before July 1, 2023; and
 (2) has been in continuous operation as a sexually oriented business since before July 1, 2023.

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

SECTION 3. IC 35-52-24-19 IS REPEALED [EFFECTIVE JULY 1, 2023]. ~~Sec. 19: IC 24-4-16.4-4~~ defines a crime concerning regulated businesses.

