

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1553

Introduced by

Representatives Klein, Hofstad, Koppelman

Senators Cook, Hogue, G. Lee

- 1 A BILL for an Act to provide for the regulation of sexually oriented businesses; to repeal
2 sections 11-11-62 and 40-05-17 of the North Dakota Century Code, relating to county and city
3 restrictions on adult establishments; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

6 1. "Adult arcade" means any place where the public is permitted or invited and where
7 a still or motion picture machine, projector, or other image-producing device is:

8 a. Coin-operated or slug-operated or electronically, electrically, or mechanically
9 controlled; and

10 b. Maintained to show an image or images involving a specific sexual activity or
11 a specific anatomical area to an individual in a booth or viewing room.

12 2. "Adult bookstore or video store" means a commercial establishment that offers for
13 sale or rent any of the following as one of its principal business purposes:

14 a. A book, magazine, periodical or other printed matter, photograph, film, motion
15 picture, videocassette, reproduction, slide, or other visual representation that
16 depicts or describes a specific sexual activity; or

17 b. Sexually oriented devices.

18 3. "Adult cabaret" means any nightclub, bar, restaurant, or other similar commercial
19 establishment that regularly features:

20 a. An individual who appears in a state of nudity or who is seminude;

21 b. A live performance that is characterized by the exposure of a specific
22 anatomical area or a specific sexual activity; or

- 1 c. A film, motion picture, videocassette, slide, or other photographic reproduction
- 2 that is characterized by the depiction or description of a specific sexual activity
- 3 or a specific anatomical area.
- 4 4. "Adult establishment" means either an adult bookstore, an adult motion picture
- 5 theater, an adult theater, escort service, or a massage establishment that offers
- 6 adult services.
- 7 5. "Adult live entertainment establishment" means an establishment that features
- 8 either:
- 9 a. An individual who appears in a state of nudity; or
- 10 b. A live performance that is characterized by the exposure of a specific
- 11 anatomical area or a specific sexual activity.
- 12 6. "Adult motion picture theater" means a commercial establishment in which for any
- 13 form of consideration a film, motion picture, videocassette, slide, or other similar
- 14 photographic reproduction characterized by the depiction or description of a
- 15 specific sexual activity or a specific anatomical area is predominantly shown.
- 16 7. "Adult theater" means a theater, a concert hall, an auditorium, or a similar
- 17 commercial establishment that predominantly features an individual who appears
- 18 in a state of nudity or who engages in a live performance that is characterized by
- 19 the exposure of a specific anatomical area or a specific sexual activity.
- 20 8. "Child care facility" means a facility that is licensed under chapter 50-11.1.
- 21 9. "Escort" means an individual who:
- 22 a. For consideration agrees or offers to act as a date for another individual; or
- 23 b. Agrees or offers to privately model lingerie or to privately perform a striptease
- 24 for another individual.
- 25 10. "Escort agency" means a person that furnishes, offers to furnish, or advertises the
- 26 furnishing of an escort as one of its primary business purposes for any fee, tip, or
- 27 other consideration.
- 28 11. "Local unit of government" means a city or a county.
- 29 12. "Massage establishment that offers adult services" means an establishment that
- 30 offers massage services characterized by an emphasis on a specific sexual activity
- 31 or a specific anatomical area.

- 1 13. "Nude", "nudity", or "state of nudity" means any of the following:
- 2 a. The appearance of a human anus, human genitals, or a female breast below
- 3 a point immediately above the top of the areola; or
- 4 b. A state of dress that fails to opaquely cover a human anus, human genitals, or
- 5 a female breast below a point immediately above the top of the areola.
- 6 14. "Nude model studio" means a place where an individual who appears in a state of
- 7 nudity or who displays a specific anatomical area is observed, sketched, drawn,
- 8 painted, sculptured, photographed, or otherwise depicted by another person for
- 9 money or other consideration. The term does not include a proprietary school that
- 10 is licensed by this state, a college, community college, or university that is
- 11 supported entirely or in part by taxation, a private college or university that
- 12 maintains and operates educational programs in which credits are transferable to a
- 13 college, community college, or university that is supported entirely or in part by
- 14 taxation, or a structure containing an establishment to which the following apply:
- 15 a. A sign is not visible from the exterior of the structure and no other advertising
- 16 appears indicating that a nude person is available for viewing;
- 17 b. An individual must enroll at least three days in advance of a class in order to
- 18 participate; and
- 19 c. No more than one nude or seminude model is on the premises at a time.
- 20 15. "Park" means any area primarily intended for recreational use that is dedicated or
- 21 designated by any federal, state, or local unit of government; local agency or entity;
- 22 or any private individual, business, or group, including any land leased, reserved,
- 23 or held open to the public for use as a park.
- 24 16. "Place of worship" means a structure in which individuals regularly assemble for
- 25 worship, ceremonies, rituals, and education relating to a particular form of religious
- 26 belief and which a reasonable individual would conclude is a place of worship by
- 27 reason of design, signs, or architectural features.
- 28 17. "Playground" means any:
- 29 a. Public park or outdoor recreational area with play equipment installed and
- 30 designed to be used by children; and

- 1 b. Outdoor recreational area with play equipment installed that is owned and
2 operated by a charitable organization or a business.
- 3 18. "Public library" means a city, county, educational, or regional library established by
4 any local unit of government.
- 5 19. "Recreational area or facility" means an area or facility open to the public for
6 recreational purposes.
- 7 20. "Residence" means a permanent dwelling place.
- 8 21. "School" means a public or private elementary, secondary, charter, or
9 postsecondary school.
- 10 22. "Seminude" means a state of dress in which clothing covers no more than the
11 genitals, the pubic region, and a female breast below a point immediately above
12 the top of the areola, as well as portions of the body that are covered by supporting
13 straps or devices.
- 14 23. "Sexually oriented business" means an adult arcade, an adult bookstore or video
15 store, an adult cabaret, an adult live entertainment establishment, an adult motion
16 picture theater, an adult theater, a massage establishment that offers adult
17 services, an escort agency, or a nude model study.
- 18 24. "Sexually oriented devices" includes any artificial or simulated specified anatomical
19 area or any other device or paraphernalia that is designed in whole or in part for
20 specified sexual activities.
- 21 25. "Specific anatomical area" means any of the following:
22 a. A human anus, genitals, pubic region, or a female breast below a point
23 immediately above the top of the areola that is less than completely and
24 opaquely covered; or
25 b. Male genitals in a discernibly turgid state if less than completely and opaquely
26 covered.
- 27 26. "Specific sexual activity" means any of the following:
28 a. A sex act, actual or simulated, including an act of human masturbation, sexual
29 intercourse, oral copulation, or sodomy; or
30 b. Fondling or other erotic touching of a human genital, a pubic region, a buttock,
31 an anus, or a female breast.

- 1 27. "Walking trail" means a pedestrian trail or path primarily used for walking but also
2 for cycling or other activities.

3 **SECTION 2. Location of sexually oriented businesses.**

- 4 1. A sexually oriented business may not be operated within:
5 a. One thousand five hundred feet [457.2 meters] of a place of worship, child
6 care facility, park, playground, public library, recreational area or facility,
7 school or walking trail, or residence.
8 b. One thousand five hundred feet [457.2 meters] of another sexually oriented
9 business.
10 2. For the purpose of this Act, measurement must be made in a straight line, without
11 regard to intervening structures or objects, from the nearest portion of the building
12 or structure used as a part of the premises where a sexually oriented business is
13 conducted to the nearest property line of the premises listed above.

14 **SECTION 3. Alcoholic beverages prohibited from sale, use, or consumption at**
15 **sexually oriented businesses.**

- 16 1. A sexually oriented business is prohibited from the sale, use, or consumption of
17 alcohol beverages. It is a violation of this Act for any person to sell, use, or
18 consume alcoholic beverages on the premises of a sexually oriented business.
19 2. This section does not apply to theaters, performing arts centers, civic centers, and
20 dinner theaters at which live dance, ballet, music, and dramatic performances of
21 serious artistic merit are offered on a regular basis, at which the predominant
22 business or attraction is not the offering of entertainment that is intended for the
23 sexual interests or titillation of customers, and at which the establishment is not
24 distinguished by an emphasis on or promotion of nude or seminude performances.

25 **SECTION 4. Hours of service.** A sexually oriented business may not be open or
26 remain open for business between twelve midnight and six a.m. on Monday through Saturday
27 and between twelve midnight and twelve noon on Sunday.

28 **SECTION 5. Other uses.**

- 29 1. A determination of preponderance need not be based on whether or not a
30 numerical majority or plurality of the materials are distinguished or characterized by
31 their emphasis on matter depicting, describing, or relating to specified sexual

activities or specified anatomical areas. When making a determination as to whether an establishment displays, sells, distributes, or exhibits a preponderance of materials that are so distinguished or characterized, the governing body or factfinder shall consider the totality of the circumstances and may consider, among other factors determined relevant, any of the following:

- a. Dominant theme of the establishment;
- b. Total impression of the emphasis placed on such materials by the establishment;
- c. Externalities of the establishment, including the manner of packaging or display and advertising which demonstrates the dominant theme or emphasis being placed on such materials by the establishment;
- d. Obtrusive characteristics of the materials which tend to distract from and dominate the other classes of materials;
- e. Manner of display of the materials;
- f. Advertising emphasis; or
- g. Whether the establishment prohibits minors from entering the premises or any portion thereof.

2. Any building, premises, structure, or other facility that contains any adult establishment, may not contain any other kind of adult establishment. Any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained may not contain any adult establishment.

SECTION 6. Touching. While on the premises of a sexually oriented business:

1. An employee, while nude or seminude, may not knowingly do any of the following:
 - a. Appear in the view of any patron unless the employee is at least six feet [7.92 meters] from all patrons and on a stage at least two feet [.61 meter] above the floor;
 - b. Touch any patron or the clothing of any patron; or
 - c. While in the view of any patron, touch any other person who is nude or seminude.

2. A patron may not knowingly touch any employee while that employee is nude or seminude, or touch the clothing or costume of any employee while that employee is nude or seminude.

3. An employee of a sexually oriented business who regularly appears nude or seminude on the premises of that sexually oriented business may not knowingly be or remain within six feet [7.92 meters] of any patron.

SECTION 7. Penalty. Any person that knowingly violates this Act is guilty of a class B misdemeanor. Each day of violation constitutes a separate offense.

SECTION 8. County and city ordinances. This Act does not prohibit a local unit of government from enacting and enforcing ordinances that regulate the location of sexually oriented businesses in a manner that is at least as restrictive as this chapter.

SECTION 9. Civil action. If there is reason to believe that a violation of this Act is being committed in any local unit of government:

1. The state's attorney of the county in which the sexually oriented business is located shall maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee, or agent of the building or place in or where the violation is occurring from directly or indirectly committing or permitting the violation; or

2. A citizen of this state who resides in the county, city, or town in which the sexually oriented business is located may maintain in the citizen's own name an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee, or agent of the building or place in or where the violation is occurring from directly or indirectly committing or permitting the violation.

SECTION 10. REPEAL. Sections 11-11-62 and 40-05-17 of the North Dakota Century Code are repealed.