

No. 1996-120

AN ACT

HB 1053

Amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, adding provisions relating to the operation and suspension of adult-oriented establishments; and imposing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Part II of Title 68 of the Pennsylvania Consolidated Statutes is amended by adding a subpart to read:

PART II
REAL PROPERTY
* * *

SUBPART E
USES OF PROPERTY

Chapter

55. Adult-Oriented Establishments

CHAPTER 55
ADULT-ORIENTED ESTABLISHMENTS

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§ 5501. Legislative findings and intent.

(a) Findings.—The General Assembly finds as follows:

- (1) There are within this Commonwealth a number of adult-oriented establishments which require special regulation by law and supervision by public safety agencies in order to protect and preserve the health, safety and welfare of patrons of these establishments, as well as the health, safety and welfare of the citizens of this Commonwealth.

(2) Statistics and studies performed in a substantial number of communities in this Commonwealth, in the United States and by the State of Delaware indicate that:

(i) large numbers of persons, primarily male, frequent adult-oriented establishments, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called adult motion pictures, videotapes or live entertainment or a combination of motion pictures, videotapes and live entertainment;

(ii) the closed booths, cubicles, studios and rooms and holes in partitions between booths, cubicles, studios and rooms have been used by patrons, clients or customers of adult-oriented establishments for the purpose of engaging in sexual acts;

(iii) male and female prostitutes have been known to frequent the establishments in order to provide sex for hire to the patrons, clients or customers within the booths, cubicles and rooms;

(iv) doors, curtains, blinds and/or other closures installed in or on the entrances or exits, or both, of the booths, cubicles, studios and rooms which are closed while the booths, cubicles, studios and rooms are in use encourage patrons using the booths, cubicles, studios and rooms to engage in sexual acts in the closures and through holes in partitions between the closures with prostitutes, patrons, clients or customers, thereby promoting and encouraging prostitution and the commission of sexual acts which result in the direct exchange of bodily fluids which put the participants at high risk for contracting communicable diseases, including AIDS, and which cause blood, semen and urine to be deposited on the floors or walls, or both, of the booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come in contact with such deposits; and

(v) the reasonable regulation and supervision of such adult-oriented establishments tend to discourage sexual acts and prostitution and thereby promote the health, safety and welfare of the patrons, clients and customers of these establishments.

(3) The continued unregulated operation of such adult-oriented establishments, including, without limitation, those specifically cited in paragraph (1), is and would be detrimental to the general health, safety and welfare of the citizens of this Commonwealth.

(4) The Constitution of Pennsylvania grants to the General Assembly power, especially police power, to enact reasonable legislation to regulate and supervise adult-oriented establishments in order to protect the public health, safety and welfare.

(b) Intent.—It is not the intent of the General Assembly in enacting this legislation to deny to any person rights of speech protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor is it the intent of the General Assembly to impose by this chapter any

additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books and other materials. Further, by enacting this legislation, the General Assembly does not intend to deny or restrict the rights of any adult to obtain or view, or both, any sexually oriented materials protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of sexually oriented materials may have to sell, distribute or exhibit these materials.

§ 5502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Adult bookstore.” An establishment having a substantial or significant portion of its stock and trade in, or an establishment which as one of its principal business purposes offers for sale, books, films, video cassettes or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and, in conjunction therewith, has facilities for the presentation of adult entertainment for observation by patrons.

“Adult entertainment.”

(1) An exhibition of any adult-oriented motion pictures, meaning those distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(2) A live performance, display or dance of any type which has as a significant or substantial portion of the performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomiming, modeling or any other personal services offered customers.

“Adult mini-motion picture theater.” An enclosed building with a capacity of less than 50 persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

“Adult motion picture theater.” An enclosed building with a capacity of 50 or more persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

“Adult-oriented establishment.” The term includes, without limitation, the following establishments when operated for profit, whether direct or indirect:

- (1) Adult bookstores.

- (2) Adult motion picture theaters.
- (3) Adult mini-motion picture theaters.
- (4) Any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or where an entertainer provides adult entertainment to a member of the public, a patron or a member.
- (5) An adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

The term "booths, cubicles, rooms, studios, compartments or stalls" for purposes of defining "adult-oriented establishments" does not mean enclosures which are private offices used by the owner, manager or persons employed on the premises for attending to the tasks of their employment, and which are not held out to the public for the purpose of viewing motion pictures or other entertainment for a fee, and which are not open to any persons other than employees.

"Employee." Any and all persons, including independent contractors, who work in or at or render any service directly related to the operation of an adult-oriented establishment.

"Entertainer." A person who provides entertainment within an adult-oriented establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

"Inspector." An employee of a municipality's public health department authorized and designated by the director of the department, an employee of a municipality's department of inspections and permits authorized and designated by the director of the department, an employee of a municipality's police department authorized by the commanding officer of the police department or other persons designated by the governing body of a municipality to inspect premises regulated under this chapter to cooperate in taking the required actions authorized by this chapter where violations are found on a premises and to request correction of unsatisfactory conditions found on a premises.

"Minor." A person under 18 years of age.

"Operator." A person, partnership or corporation operating, conducting or maintaining an adult-oriented establishment.

"Sexual activities." The term does not include any of the following:

- (1) Medical publications or films or bona fide educational publications or films.
- (2) Any art or photography publications which devote at least 25% of the lineage of each issue to articles and advertisements dealing with subjects of art or photography.

(3) Any news periodical which reports or describes current events and which from time to time publishes photographs of nude or seminude persons in connection with the dissemination of the news.

(4) Any publications or films which describe and report different cultures and which from time to time publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the populations.

“Specified anatomical areas.”

(1) Less than completely and opaquely covered:

(i) human genitals or pubic region;

(ii) buttocks; or

(iii) female breasts below a point immediately above the top of the areola.

(2) Human male genitals in a discernible turgid state, even if completely opaquely covered.

“Specified sexual activities.” The term includes any of the following:

(1) Human genitals in a state of sexual stimulation or arousal.

(2) Acts of human masturbation, sexual intercourse or sodomy.

(3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

§ 5503. Requirements for adult-oriented establishments.

(a) Loitering by minors prohibited.—No operator or employee of an adult-oriented establishment shall permit any minor to loiter in any part of the establishment, including parking lots immediately adjacent to the establishment used by patrons of an adult-oriented establishment.

(b) Interior plan.—Every adult-oriented establishment doing business in this Commonwealth shall be well lighted at all times and be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls where adult entertainment is provided shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. It shall be unlawful to install enclosed booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures or other types of adult-oriented entertainment.

(c) Certain apertures prohibited.—No adult-oriented establishment shall contain partitions between subdivisions of a room or portions or parts of a building, structure or premises with an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partitions.

(d) Illumination and visibility.—The operator of each adult-oriented establishment shall be responsible for and shall provide that any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be well lighted and readily

accessible at all times and shall be continuously open to view in its entirety. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level. It shall be the duty of the operator and the operator's agents to ensure that the illumination required by this subsection is maintained at all times that a patron is present in the premises.

§ 5504. Liability of operator.

Every act or omission by an employee constituting a violation of this chapter shall be deemed the act or omission of the operator if the act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for the act or omission in the same manner as if the operator committed the act or caused the omission.

§ 5505. Establishments open for inspection.

All adult-oriented establishments shall be open to inspection at all reasonable times by inspectors.

§ 5506. Civil action to enjoin or abate violations.

(a) Action authorized.—An action to enjoin or abate a violation of this chapter may be brought in the name of the Commonwealth of Pennsylvania by the Attorney General, the district attorney of the county concerned or the solicitor of the municipality in which the adult-oriented establishment is located. The action shall be brought and tried as an action in equity in the court of common pleas of the county in which the adult-oriented establishment is located.

(b) Procedure.—

(1) If it is made to appear, by affidavits or otherwise, to the satisfaction of the court that a violation exists, a temporary writ of injunction shall forthwith issue, directed to the operator of the adult entertainment establishment or the owner of the premises, or both, restraining the operator or owner from continuing or permitting the continuation of any violation or violations of this chapter until the conclusion of the hearing and a decision by the court. No bond shall be required in instituting such proceedings. This chapter, insofar as it provides for methods of service and bond, shall not be deemed to be suspended or affected by the Pennsylvania Rules of Civil Procedure governing the action in equity.

(2) It shall not be necessary for the court to find the property involved was being unlawfully used at the time of the hearing, but, on finding that the material allegations of the petition are true, the court shall order that neither the premises nor any part of the premises be used in violation of this chapter. Upon judgment of the court ordering the violations to be abated, the court may order that neither the premises nor any part of the premises shall be occupied or used for any purpose for up to one year

following the date of the court's order, but the court may, in its discretion, permit the premises to be occupied or used by the operator or owner if the operator or owner, or both, posts a bond or a joint bond in the discretion of the court with sufficient surety to be approved by the court in the penal and liquidated sum of not less than \$1,000 nor more than \$2,500, payable to the Commonwealth of Pennsylvania and conditioned that neither the building nor a part of the building be used in violation of this chapter and that the operator will pay all fines, costs and damages that may be assessed for any violation of this chapter upon the premises.

(3) Service of any preliminary or permanent injunction shall be made personally upon the operator and owner of the premises if such persons can be found in the county. If the operator or owner cannot be found, a copy of the order shall be delivered to any employee of the operator on the establishment premises or, in the case of the owner, upon an agent, if any. If no employee or agent can be found or service cannot be made on an employee or agent of the owner, then service shall be made as the court may direct. Any person other than the operator or owner who shall be served with any notice of an injunction shall within 24 hours thereafter deliver the notice to the operator or owner, as the case may be, or mail it to the operator or owner by registered mail if the address of the operator or owner, as the case may be, is known to the person served.

§ 5507. Violation of abatement order or injunction.

An operator or owner of an adult entertainment establishment or any agent of the operator or owner who after any injunction has been granted uses the premises or any part of the premises, or knowingly permits the premises or any part of the premises to be used in violation of an order of abatement or injunction, shall be subject to summary punishment as for contempt of court, in the manner now provided by law.

§ 5508. Penalty.

A person violating any provision of this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$300 or to imprisonment for not more than 90 days, or both.

§ 5509. Existing remedies preserved.

This chapter shall not be deemed to affect any remedy available against an adult entertainment establishment or adult bookstore.

Section 2. This act shall take effect in 60 days.

APPROVED—The 16th day of October, A.D. 1996.

THOMAS J. RIDGE