

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1536

5 By: Representatives Overbey, Wells, George, Lamoureux, Berry, Abernathy, Adcock, Allen, Anderson,
6 T. Baker, Blount, T. Bradford, Breedlove, E. Brown, J. Brown, Burkes, Burris, Cash, Cheatham, Cook,
7 Cooper, Cornwell, D. Creekmore, Davenport, Davis, Dickinson, S. Dobbins, Dunn, Edwards, L. Evans,
8 D. Evans, Everett, Flowers, Garner, Gaskill, Glidewell, R. Green, Hall, Hardwick, Hardy, Harrelson,
9 Harris, Hawkins, House, Hoyt, D. Hutchinson, Hyde, Jeffrey, Kenney, Key, Kidd, King, W. Lewellen,
10 Lovell, Lowery, Maloch, M. Martin, Maxwell, Medley, Moore, Norton, Pate, Patterson, Pennartz, Pickett,
11 Pierce, Powers, S. Prater, Pyle, Ragland, Rainey, Reep, Reynolds, J. Roebuck, Rogers, Rosenbaum,
12 Sample, Saunders, Shelby, Stewart, Sullivan, Sumpter, Thyer, Wagner, Walters, Wills, Wood, Woods,
13 Wyatt
14 By: Senators Wilkinson, Laverty, Altes, Baker, Bookout, Broadway, Critcher, Glover, Hendren, J.
15 Jeffress, G. Jeffress, Miller, B. Pritchard, T. Smith, J. Taylor, Trusty, Womack
16
17

For An Act To Be Entitled

19 AN ACT TO LIMIT THE LOCATION OF ADULT-ORIENTED
20 BUSINESSES IN PROXIMITY TO LOCATIONS FREQUENTED
21 BY CHILDREN; AND FOR OTHER PURPOSES.
22

Subtitle

24 TO LIMIT THE LOCATION OF ADULT-ORIENTED
25 BUSINESSES IN PROXIMITY TO LOCATIONS
26 FREQUENTED BY CHILDREN.
27
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

31 SECTION 1. Arkansas Code Title 14, Chapter 1, is amended to add an
32 additional subchapter to read as follows:

33 Subchapter 3 – Adult-Oriented Businesses in Proximity to Locations Frequented
34 by Children

35 14-1-301. Findings and legislative intent.

36 (a) The purpose of this subchapter is to establish requirements



1 governing the location of adult-oriented businesses in order to protect the
 2 public health, safety, and welfare and to prevent criminal activity.

3 (b) Based on evidence of the adverse secondary effects of adult-
 4 oriented businesses and on findings discussed in cases, including City of Los
 5 Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002), Erie v. PAP's A.M., 529
 6 U.S. 277 (2000), City of Renton v. Playtime Theatres, Inc., 475 U.S. 41
 7 (1986), and Young v. American Mini Theatres, 427 U.S. 50 (1976), the General
 8 Assembly finds that:

9 (1) Adult-oriented businesses, as a category of commercial land
 10 uses, are associated with a wide variety of adverse secondary effects,
 11 including a negative impact on surrounding properties, personal and property
 12 crime, illicit drug use and trafficking, lewdness, prostitution, potential
 13 spread of disease, and sexual assault;

14 (2) Adult-oriented businesses should be separated from schools,
 15 playgrounds, places of worship, and other places frequented by children to
 16 minimize the impact of the secondary effects of the adult-oriented businesses
 17 on schools, playgrounds, places of worship, and other places frequented by
 18 children; and

19 (3)(A) There is a substantial government interest in preventing
 20 each of the negative secondary effects described in subdivision (b)(1) of
 21 this section.

22 (B) The substantial government interest exists independent
 23 of any comparative analysis between adult-oriented businesses and nonadult-
 24 oriented businesses.

25
 26 14-1-302. Definitions.

27 As used in this subchapter:

28 (1) "Adult arcade" means any place where the public is permitted
 29 or invited and where a still or motion picture machine, projector, or other
 30 image-producing device is:

31 (A) Coin-operated or slug-operated or electronically,
 32 electrically, or mechanically controlled; and

33 (B) Maintained to show an image or images involving a
 34 specific sexual activity or a specific anatomical area to a person in a booth
 35 or viewing room;

36 (2) "Adult bookstore or video store" means a commercial

1 establishment that offers for sale or rent any of the following as one (1) of
 2 its principal business purposes:

3 (A) A book, magazine, periodical or other printed matter,
 4 photograph, film, motion picture, videocassette, reproduction, slide, or
 5 other visual representation that depicts or describes a specific sexual
 6 activity; or

7 (B) An instrument, a device, or paraphernalia that is
 8 designed for use in connection with a specific sexual activity;

9 (3) "Adult cabaret" means any nightclub, bar, restaurant, or
 10 other similar commercial establishment that regularly features a:

11 (A) Person who appears in a state of nudity or who is
 12 seminude;

13 (B) Live performance that is characterized by the exposure
 14 of a specific anatomical area or a specific sexual activity; or

15 (C) Film, motion picture, videocassette, slide, or other
 16 photographic reproduction that is characterized by the depiction or
 17 description of a specific sexual activity or a specific anatomical area;

18 (4) "Adult live entertainment establishment" means an
 19 establishment that features either a:

20 (A) Person who appears in a state of nudity; or

21 (B) Live performance that is characterized by the exposure
 22 of a specific anatomical area or a specific sexual activity;

23 (5) "Adult motion picture theater" means a commercial
 24 establishment in which for any form of consideration a film, motion picture,
 25 videocassette, slide, or other similar photographic reproduction
 26 characterized by the depiction or description of a specific sexual activity
 27 or a specific anatomical area is predominantly shown;

28 (6) "Adult-oriented business" means an adult arcade, an adult
 29 bookstore or video store, an adult cabaret, an adult live entertainment
 30 establishment, an adult motion picture theater, an adult theater, a massage
 31 establishment that offers adult services, an escort agency, or a nude model
 32 studio;

33 (7) "Adult theater" means a theater, a concert hall, an
 34 auditorium, or a similar commercial establishment that predominantly features
 35 a person who appears in a state of nudity or who engages in a live
 36 performance that is characterized by the exposure of a specific anatomical

1 area or a specific sexual activity;

2 (8) "Child care facility" means a facility that is licensed by
 3 the Division of Child Care and Early Childhood Education of the Department of
 4 Health and Human Services to provide care or supervision for minor children;

5 (9) "Escort" means a person who:

6 (A) For consideration agrees or offers to act as a date
 7 for another person; or

8 (B) Agrees or offers to privately model lingerie or to
 9 privately perform a striptease for another person;

10 (10) "Escort agency" means a person or business association that
 11 furnishes, offers to furnish, or advertises the furnishing of an escort as
 12 one (1) of its primary business purposes for any fee, tip, or other
 13 consideration;

14 (11) "Local unit of government" means a city of the first class,
 15 a city of the second class, an incorporated town, or a county;

16 (12) "Massage establishment that offers adult services" means an
 17 establishment that offers massage services characterized by an emphasis on a
 18 specific sexual activity or a specific anatomical area;

19 (13) "Nude", "nudity", or "state of nudity" means any of the
 20 following:

21 (A) The appearance of a human anus, human genitals, or a
 22 female breast below a point immediately above the top of the areola; or

23 (B) A state of dress that fails to opaquely cover a human
 24 anus, human genitals, or a female breast below a point immediately above the
 25 top of the areola;

26 (14)(A) "Nude model studio" means a place where a person who
 27 appears in a state of nudity or who displays a specific anatomical area is
 28 observed, sketched, drawn, painted, sculptured, photographed, or otherwise
 29 depicted by another person for money or other consideration.

30 (B) "Nude model studio" does not include a proprietary
 31 school that is licensed by this state, a college, community college, or
 32 university that is supported entirely or in part by taxation, a private
 33 college or university that maintains and operates educational programs in
 34 which credits are transferable to a college, community college, or university
 35 that is supported entirely or in part by taxation, or a structure containing
 36 an establishment to which the following apply:

1 (i) A sign is not visible from the exterior of the
 2 structure and no other advertising appears indicating that a nude person is
 3 available for viewing;

4 (ii) A person must enroll at least three days in
 5 advance of a class in order to participate; and

6 (iii) No more than one (1) nude or seminude model is
 7 on the premises at a time;

8 (15) "Park" means any area primarily intended for recreational
 9 use that is dedicated or designated by any federal, state, or local unit of
 10 government, local agency or entity, or any private individual, business, or
 11 group including any land leased, reserved, or held open to the public for use
 12 as a park;

13 (16) "Place of worship" means a structure where persons
 14 regularly assemble for worship, ceremonies, rituals, and education relating
 15 to a particular form of religious belief and which a reasonable person would
 16 conclude is a place of worship by reason of design, signs, or architectural
 17 features;

18 (17) "Playground" means any:

19 (A) Public park or outdoor recreational area with play
 20 equipment installed and designed to be used by children; and

21 (B) Outdoor recreational area with play equipment
 22 installed that is owned and operated by a charitable organization or a
 23 business;

24 (18) "Public library" means:

25 (A) A city library established under § 13-2-501 et
 26 seq.;

27 (B) A county library established under § 13-2-401 et
 28 seq.;

29 (C) A joint city-county library established under §
 30 13-2-401 et seq. or § 13-2-501 et seq.; and

31 (D) Any other library system established under § 13-2-401
 32 et seq., § 13-2-501 et seq., or § 13-2-901 et seq.;

33 (19) "Recreational area or facility" means an area or facility
 34 open to the public for recreational purposes;

35 (20) "Residence" means a permanent dwelling place;

36 (21) "School" means a public or private elementary, secondary,

1 charter, or postsecondary school;

2 (22) "Seminude" means a state of dress where clothing covers no
 3 more than the genitals, the pubic region, and a female breast below a point
 4 immediately above the top of the areola, as well as portions of the body that
 5 are covered by supporting straps or devices;

6 (23) "Specific anatomical area" means any of the following:

7 (A) A human anus, genitals, pubic region, or a female
 8 breast below a point immediately above the top of the areola that is less
 9 than completely and opaquely covered; or

10 (B) Male genitals in a discernibly turgid state if less
 11 than completely and opaquely covered;

12 (24) "Specific sexual activity" means any of the following:

13 (A) A sex act, actual or simulated, including an act of
 14 human masturbation, sexual intercourse, oral copulation, or sodomy; or

15 (B) Fondling or other erotic touching of a human genital,
 16 a pubic region, a buttock, an anus, or a female breast; and

17 (25) "Walking trail" means a pedestrian trail or path primarily
 18 used for walking but also for cycling or other activities.

19
 20 14-1-303. Location of adult-oriented businesses.

21 (a) An adult-oriented business shall not be located within one
 22 thousand feet (1,000') of a child care facility, park, place of worship,
 23 playground, public library, recreational area or facility, residence, school,
 24 or walking trail.

25 (b) For the purposes of this section, the measurement required in
 26 subsection (a) of this section shall be made in a straight line in all
 27 directions, without regard to intervening structures or objects, from the
 28 nearest point on the property line of a parcel containing an adult-oriented
 29 business to the nearest point on the property line of a parcel containing a
 30 child care facility, park, place of worship, playground, public library,
 31 recreational area or facility, residence, school, or walking trail.

32 (c) An adult-oriented business lawfully operating in conformity with
 33 this section is not in violation of this section if a child care facility,
 34 park, place of worship, playground, public library, recreational area or
 35 facility, residence, school, or walking trail subsequently locates within one
 36 thousand feet (1,000') of the adult-oriented business.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

14-1-304. County and municipal ordinances.

This subchapter does not prohibit a local unit of government from enacting and enforcing ordinances that regulate the location of adult-oriented businesses in a manner that is at least as restrictive as § 14-1-303.

14-1-305. Civil action.

(a) If there is reason to believe that a violation of this subchapter is being committed in any local unit of government:

(1) The county attorney of the county where the adult-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 where the adult-oriented business is located may in the citizen's own name 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.

14-1-306. Criminal penalties.

(a)(1) A violation of § 14-1-303 is a Class A misdemeanor.

(2) Each day of violation constitutes a separate offense.

(b) A person violating § 14-1-303 is subject to a fine under § 5-4-201 et seq. and a sentence of imprisonment under § 5-4-401 et seq.

14-1-307. Exceptions.

This subchapter shall not apply to an adult-oriented business that is lawfully operating on or before the effective date of this act.