

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Representative Thomas

# A Bill

HOUSE BILL 1983

## For An Act To Be Entitled

"AN ACT TO PROVIDE THAT CERTAIN KINDS OF SEXUAL ACTIVITIES WHICH INVOLVE HIGH-RISK SEXUAL CONDUCT ARE UNLAWFUL AND TO PROVIDE THAT THE CONDUCT OF THOSE ACTIVITIES IN COMMERCIAL BUILDINGS AND STRUCTURES CONSTITUTES A PUBLIC NUISANCE; AND FOR OTHER PURPOSES."

## Subtitle

"TO PROVIDE THAT CERTAIN KINDS OF SEXUAL ACTIVITIES WHICH INVOLVE HIGH-RISK SEXUAL CONDUCT ARE UNLAWFUL AND THOSE ACTIVITIES CONSTITUTE A PUBLIC NUISANCE."

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

SECTION 1. (a) It is hereby found by the Eightieth Arkansas General Assembly that there are certain commercial premises, buildings, structures or parts thereof which, by reason of the design and use of the premises, buildings or structures are conducive to the spread of communicable disease to persons frequenting the premises, buildings and structures; and also to the public health, safety and welfare. The General Assembly declares that the health, safety and welfare of all persons in this State should be protected through the application and enforcement of standards regulating these premises, buildings and structures, in order to eliminate the possibility of the spread of, or infection by, communicable diseases.

(b) The sexually transmittable disease of Acquired Immune Deficiency Syndrome, currently found to be irreversible and uniformly fatal, is found to be of particular danger to persons who frequent adult entertainment

1 establishments or other premises. A high incidence of this and other  
2 communicable diseases is found to occur in discernable population groups.  
3 The risk factors for obtaining or spreading A.I.D.S. are associated with  
4 high-risk sexual conduct. The commercial premises, buildings and where  
5 persons might place themselves at risk of infection from this disease, or  
6 from any other communicable disease facilitated by high-risk sexual conduct,  
7 should as public policy be regulated and standards for the prevention of the  
8 spread of these communicable diseases should be established for the  
9 protection of the public health, safety and welfare.

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11 SECTION 2. As used in this act, unless the context otherwise requires:

12 (1) "Booths, stalls or partitioned portions of a room or individual  
13 rooms" shall mean:

14 (A) Enclosures specifically offered to persons for a fee, or as  
15 an incident to performing high-risk sexual conduct; or

16 (B) Enclosures which are part of a business operated on the  
17 premises, which offers movies or other entertainment to be viewed within the  
18 enclosure, including enclosures wherein movies or other entertainment is  
19 dispensed for a fee.

20 (C) The words "booths, stalls or partitioned portions of a room  
21 or individual rooms" shall not mean enclosures which are private offices used  
22 by an owner, manager or other person employed on the premises for attending  
23 to the tasks of the person\_s employment, and which office or enclosure is not  
24 held out for use or hire to the public for the purpose of viewing movies or  
25 other entertainment for a fee, and which are not open to any persons other  
26 than employees.

27 (2) "Doors, curtains or portal partitions" shall mean full, complete,  
28 nontransparent closure devices constructed so that one outside cannot see or  
29 view activity taking place within the enclosure.

30 (3) "Hazardous site" shall mean any commercial premises, building,  
31 structure or any part thereof, which is a site of high-risk sexual conduct.

32 (4) "High-risk sexual conduct" shall mean:

33 (A) Fellatio;

34 (B) Anal intercourse; or

35 (C) Vaginal intercourse with persons who engage in sexual acts

1 for exchange of money.

2 (5) "Open to an adjacent public room so that the area inside is  
3 visible to persons in such adjacent room" shall mean either:

4 (A) The absence of any door, curtain or portal partition; or

5 (B) A door or other device which is made of clear, transparent  
6 material such as glass, plexiglass or other similar material meeting building  
7 code and safety standards, which permits the activity inside the enclosure to  
8 be viewed or seen by persons outside the enclosure.

9 (6) "Director" shall mean the Director of the Arkansas Department of  
10 Health.

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12 SECTION 3. (a) No commercial building, structure, premises, part  
13 thereof or facilities therein, shall be so constructed, used, designed or  
14 operated for the purpose of engaging in, or permitting persons to engage in,  
15 sexual activities which include high-risk sexual conduct.

16 (b) No person shall own, operate, manage, rent, lease or exercise  
17 control over any commercial building, structure, premises or portion or part  
18 thereof, which contains:

19 (1) Partitions between subdivisions of a room, portion or part  
20 of a building, structure or premises having an aperture which is designed or  
21 constructed to facilitate sexual activity between persons on either side of  
22 the partition; or

23 (2) Booths, stalls, or partitioned portions of a room or  
24 individual rooms, used for the viewing of motion pictures or other forms of  
25 entertainment, having doors, curtains or portal partitions, unless such  
26 booths, stalls, partitioned portions of a room or individual rooms so used  
27 shall have at least one side open to an adjacent public room so that the area  
28 inside is visible to persons in adjacent public rooms. Such areas shall be  
29 lighted in a manner that the persons in the areas used for viewing motion  
30 pictures or other forms of entertainment are visible from the adjacent public  
31 rooms, but such lighting shall not be of such intensity as to prevent the  
32 viewing of the motion pictures or other offered entertainment.

33 (c) The standards set forth in this section shall not apply to  
34 buildings and premises which are lawfully operating as hotels, motels,  
35 apartment complexes, condominiums or rooming houses.

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SECTION 4. Department of Health.

(a) The Arkansas Department of Health shall administer and enforce this act and may adopt rules and regulations to facilitate its administration. In exercising the powers conferred by this act or by other Arkansas law relating to communicable diseases, the Department shall be guided by the most recent instructions, opinions, and guidelines of the Center for Disease Control of the United States Department of Health and Human Services as the same relate to the spread of infectious diseases.

(b) In order to ascertain the source of certain infections, and reduce the spread of infection, the Secretary and all persons so authorized by the Director shall have full power and authority to inspect or cause to be inspected, and to issue orders regarding any commercial building, structure, premises or any part thereof, which may be a site of high-risk sexual conduct. If the Director determines that a hazardous site exists, the Director may:

(1) Notify the management, owner or tenant of the premises that the Director has reasonable belief that the premises, building or structure is a hazardous site; and

(2) Issue warnings to the management, owner or tenant of the premises to remedy those items cited or listed by the Director's notice; and

(3) Once the notice and warnings have been issued, the Director or any person designated by the Director, shall have the right to proceed in accordance with Section 5 of this act.

SECTION 5. (a) After the Director has issued the notice and warning described in Section 4 of this act, the management, owner or tenant shall have ten (10) days to request a hearing before the Director or a hearing officer, for a final determination as to whether or not the site is a hazardous site. If the management, owner or tenant of the premises does not, within ten (10) days of the notice, request a hearing, the Director shall then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site. The Director shall then issue an order to the management, owner or tenant of the premises to take measures to bring the premises into compliance with Section 3 of this act.

1 (b) If the management, owner or tenant of the premises requests a  
2 hearing, the hearing shall be held before the Director or a hearing officer  
3 at a date not more than thirty (30) days after the request for a hearing.  
4 After considering all evidence, the Director shall make a determination as to  
5 whether or not the premises constitute a hazardous site. If the Director  
6 makes a determination that the premises constitute a hazardous site, he shall  
7 then issue an order and cause the premises, building or structure to be  
8 posted with a warning advising the public that the premises have been  
9 declared a hazardous site. The hearing shall be conducted pursuant to the  
10 Arkansas Administrative Procedure Act, Arkansas Code §§ 25-15-201 et seq.

11 (c) If, after thirty (30) days from issuance of the Director's order  
12 to the management, owner or tenant of the hazardous site, the Director  
13 determines that the measures to bring the premises into compliance, and to  
14 prevent high-risk sexual conduct have not been undertaken, the Director may  
15 declare the site to be a public nuisance and may seek an injunction from a  
16 court of competent jurisdiction to order the abatement of the hazardous site  
17 as a public nuisance or may secure a court order for the closure of the  
18 premises constituting a hazardous site until the premises, building or  
19 structure is in compliance with the standards set forth in section 3 of this  
20 act.

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22 SECTION 6. All provisions of this act of general and permanent nature  
23 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
24 Revision Commission shall incorporate the same in the Code.

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26 SECTION 7. If any provisions of this act or the application thereof to  
27 any person or circumstance is held invalid, the invalidity shall not affect  
28 other provisions or applications of the act which can be given effect without  
29 the invalid provisions or application, and to this end the provisions of this  
30 act are declared to be severable.

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32 SECTION 8. All laws and parts of laws in conflict with this act are  
33 hereby repealed.

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