

SENATE JUDICIARY COMMITTEE AMENDMENT NO. 1

AMENDMENT NO. _____

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 0226

House Bill No. 0890

by deleting all language after the enacting clause and by substituting instead the following:

WHEREAS, many adult-oriented establishments exist where enclosed booths, stalls or cubicles and entertainment are provided to persons for a fee for the purpose of viewing adult entertainment; and

WHEREAS, studies performed in a substantial number of communities around the country indicate that such closed booths, stalls or cubicles have been used by patrons, clients or customers of such adult-oriented establishments for the purpose of engaging anonymously in sexual acts which cause blood, semen, urine or excrement to be deposited on the floors and or walls of such enclosures; and

WHEREAS, these studies also found that closed booth activities are likely to foster a pattern of conduct inimical to the public health; that enclosed booths encourage illegal and unsanitary sexual activity; and per se present a health risk; and

WHEREAS, the health risks include the possible unchecked spread of the AIDS virus, hepatitis-B virus and other sexually transmitted diseases because tracking of potentially infected parties is not possible given the anonymity of the sexual encounter; and

WHEREAS, adult-oriented establishments, also known as sexually oriented businesses, require special supervision from public safety and health agencies in order to protect and preserve the health, safety and welfare of the patrons of such businesses, as well as citizens of the state and of the city and county in which they are located; and

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WHEREAS, extensive reviews have been conducted of land use studies concerning the secondary effects of adult-oriented establishments and sexually oriented businesses in other cities, including, but not limited to, Garden Grove, California (1991); Phoenix, Arizona (1986); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); City of Los Angeles, California (1977); Cleveland, Ohio (1977); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City (1986); Beaumont, Texas (1982); and Whittier, California (1978); and considered the experience of citizens and public officials in this state; and

WHEREAS, from review of other cities' studies and evidence from this state, there is convincing documented evidence that adult-oriented establishments, because of their very nature, have a deleterious effect on existing businesses around them, the surrounding residential areas, and the public at large, causing, among other adverse secondary effects, increased crime, downgrading of property values and spread of sexually transmitted and communicable diseases; and

WHEREAS, it is recognized that adult-oriented establishments, due to their nature, have serious objectional operational characteristics, including location, hours of operation and physical layout of the establishment, thereby contributing to crime, disease, lower property values, urban blight and downgrading of the quality of life; and

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WHEREAS, it is recognized that adult-oriented establishments are frequently used for unlawful and/or dangerous sexual activities, including prostitution, indecent exposure and public or indiscriminate masturbation and sexual conduct; and

WHEREAS, increased crime and unhealthful conduct tend to accompany, concentrate around and be aggravated by adult-oriented establishments, including, but not limited to, prostitution, pandering, unprotected or indiscriminate sexual conduct and masturbation, distribution of obscene materials and child pornography, possession and sale of controlled substances, violent crimes against persons, property crimes and exposing minors to harmful materials; and

WHEREAS, concern over sexually transmitted diseases, including AIDS, is a legitimate health concern of the state which demands reasonable regulations of adult-oriented establishments in order to protect the health and well-being of the citizens; and

WHEREAS, the experience of other states and cities demonstrate that reasonable restrictions on closing hours, as contained in this act, are beneficial and necessary as a means of reducing and curtailing deleterious secondary effects of adult-oriented establishments, including crime, noise, traffic congestion, police response time and efforts, parking problems, sexual disease, sexual activity and discarded pornographic material on neighboring properties and whereas, the Supreme Court in City of Renton v. Playtime Theaters, Inc., 475 U.S. 41, 50-52 (1986), held that states and cities may rely on the experiences of other communities to prevent or reduce the attendant harmful secondary effects of adult-oriented establishments and

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sexually oriented businesses, rather than await the impact of such effects, and whereas, several courts have upheld similar restrictions on hours of operations of such establishments and businesses, including: Mitchell v. Commission on Adult Entertainment, 802 F. Supp. 1112 (D. Del. 1992), affirmed at 10 F. 3d 123 (3rd Cir. 1993); Ellwest Stores v. Boner, 718 F. Supp. 1553, 1577 (M.D. Tenn. 1989) (law is difficult to enforce and police in middle of night); Star Satellite, Inc. v. City of Biloxi, 779 F. 2d 1074 (5th Cir. 1986); Broadway Books, Inc. v. Roberts, 642 F. Supp. 486, 491 (E. D. Tenn. 1986) (law furthers legitimate law enforcement purpose), and that, therefore, such restrictions are lawful and proper to adopt in this state; and

WHEREAS, several courts have upheld restrictions on the configuration and viewability of the peep show motion picture viewing booths in adult-oriented establishments and sexually oriented businesses as a means of controlling and preventing the spread of sexual and communicable diseases, public and unhealthy sexual activities, and unlawful sexual conduct in such booths, including: Libra Books, Inc. v. City of Milwaukee, 818 F. Supp. 263 (E. D. Wisc. 1993); City News & Novelty v. City of Waukesha, 487 N.W. 2d 316 (Wisc. App. 1993); Bamon Corp. v. City of Dayton, 923 F. 2d 470 (6th Cir. 1991); Movie & Video World v. Board of County Commissioners, 723 F. Supp. 695 S. D. Fla. 1989); Ellwest Stereo Theatre, Inc. v. Boner, 718 F. Supp. 1553 (M. D. Tenn. 1989) (Nashville open booth law upheld to prevent prostitution, sexual conduct, diseases); Berg v. Health and Hospital Corp. of Marion County, 856 F. 2d 797 (7th Cir. 1988); FW/PBS, Inc. v. City of Dallas, 837 F. 2d 1298 (5th Cir. 1988); Postscript Enterprises v. City of Bridgeton, 699 F. Supp. 1939 (E. D. Mo. 1988); Suburban Video, Inc. v.

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City of Delafield, 694 F. Supp. 585 (E. D. Wisc. 1988); Doe v. City of Minneapolis, 693 F. Supp. 774 (D. Minn. 1988); Wall distributors, Inc. v. City of Newport News, 782 F. 2d 1165 (4th Cir. 1986); Broadway Books, Inc. v. Roberts, 642 F. Supp. 486, 492 (E. D. Tenn. S. D. 1986) (Chattanooga open booth law upheld); Moody v. Board of County Commissioners, 697 P. 2d 1310 (Kan. 1986); Ellwest Stereo Theatres, Inc. v. Wenner, 681 F. 2d 1243 (9th Cir. 1982); EWAP, Inc. v. City of Los Angeles, 158 Cal. Rptr. 579 (Cal. App. 1979), and that, therefore, such restrictions are lawful and proper to adopt in this state; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, is amended by adding Sections 2 through 6 of this act as a new, appropriately designated part.

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

- (1) "Adult" means a person who has attained the age of eighteen (18);
- (2) "Adult cabaret" means a cabaret which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers;
- (3) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, which has as a significant or substantial portion of such performance, any actual or simulated performance of specified sexual activities, including removal of articles of clothing or appearing unclothed;

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(4) "Adult-oriented establishment" means any commercial establishment, business or service, or portion thereof, which offers, as its principal or predominant stock or trade, sexually oriented material, devices, or paraphernalia or specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded or live and which restricts or purports to restrict admission to adults or to any class of adults.

The term "adult-oriented establishment" includes but is not limited to:

(A) "Adult book stores", which means any corporation, partnership or business of any kind which has as its principal or predominant stock or trade books, magazines or other periodicals and which offers, sells, provides or rents for a fee:

(i) Any sexually-oriented material which is available for viewing by patrons on the premises by means of the operation of movie machines or slide projectors; or

(ii) Any sexually-oriented material which has a substantial portion of its contents devoted to the pictorial depiction of sadism, masochism or bestiality; or

(iii) Any sexually-oriented material which has as its principal theme the depiction of sexual activity by, or lascivious exhibition of, the uncovered genitals, pubic region or buttocks of children who are or appear to be under the age of eighteen (18);

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(B) "Adult shows" or "adult peep shows", which include all adult shows, exhibitions, performances or presentations which contain acts or depictions of specified sexual activities;

(C) "Adult motion picture theatres", which means an enclosed building used for presenting film presentations which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities for observation by patrons therein;

(5) "Bestiality" means sexual activity, actual or simulated, between a human being and an animal;

(6) "Masochism" means sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture or death;

(7) "Person" means an individual, partnership, limited partnership, firm, corporation or association;

(8) "Sadism" means sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture or death upon another person or animal;

(9) "Specified sexual activities" means activities, services or performances that include the following sexual activities and/or the exhibition of the following anatomical areas:

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(A) Human genitals in a state of sexual stimulation or arousal;

(B) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio or any excretory function, or representation thereof; or

(C) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts;

(10) "Sexually-oriented material" means any book, article, magazine, publication or written matter of any kind, drawing, etching, painting, photograph, motion picture film or sound recording, which depicts sexual activity, actual or simulated, involving human beings or human beings and animals, or which exhibits uncovered human genitals or pubic region in a lewd or lascivious manner or which exhibits human male genitals in a discernibly turgid state, even if completely covered.

SECTION 3. (a) No adult-oriented establishment shall open to do business before eight o'clock a.m. (8:00 a.m.), Monday through Saturday; and no such establishment shall remain open after midnight. (12:00 a.m.), Monday through Saturday. No adult-oriented establishment shall be open for business on any Sunday or a legal holiday as designated in Tennessee Code Annotated, Section 15-1-101.

(b) A local ordinance, resolution or private act may establish opening hours for adult-oriented establishments which are later than eight o'clock a.m. (8:00 a.m.) and closing hours which are earlier than midnight (12:00 a.m.), but in no event may such ordinances, resolutions

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or private acts extend the opening hours to earlier than eight o'clock a.m. (8:00 a.m.) or the closing hours to later than midnight (12:00 a.m.).

SECTION 4. No person shall own, operate, manage, rent, lease or exercise control over any commercial building, structure, premises or portion or part thereof, which is an adult-oriented establishment and which contains:

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

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

SECTION 5. A first offense for a violation of this part is a Class B misdemeanor punishable only by a fine of five hundred dollars (\$500); and a second or subsequent such offense is a Class A misdemeanor.

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SECTION 6. The opening and closing time limitations placed on adult-oriented establishments in Section 3 of this act shall not apply to an establishment or the portion thereof which offers only live, stage adult entertainment in a theatre, adult cabaret, or dinner show type setting.

SECTION 7. Nothing in this act shall pre-empt or prevent political subdivisions in this state from enacting and enforcing other lawful and reasonable restrictions, regulations, licensing, zoning and other civil or administrative provisions concerning the location, configuration, code compliance or other business operations or requirements of adult-oriented establishments and sexually oriented businesses.

SECTION 8. This act shall take effect July 1, 1995, the public welfare requiring it.