

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 940 Session of
1995

INTRODUCED BY DURHAM, PITTS, ARMSTRONG, LEH, BIRMELIN, MICOZZIE,
RAYMOND, BAKER, CALTAGIRONE, HERSHEY, PHILLIPS, GAMBLE,
ADOLPH, GODSHALL, STERN, ROHRER, LaGROTTA, KIRKLAND,
TRAVAGLIO, ZIMMERMAN, TRUE AND STRITTMATTER,
FEBRUARY 28, 1995

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 5, 1995

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for the offense of public
3 indecency; and providing penalties.

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

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 5905. Public indecency.

9 (a) Statement of purpose.--The purpose of this section is to
10 further the important and substantial State interest of
11 protecting societal order and morality. It is not intended and
12 shall not be construed as to infringe upon protected expressive
13 conduct or symbolic speech.

14 (b) Offense defined.--A person commits the offense of public
15 indecency if that person in a public place knowingly or
16 intentionally:

1 (1) engages in sexual intercourse, including intercourse
2 per os or per anus, with some penetration however slight;
3 emission not being required, masturbation, sadism, masochism,
4 bestiality, fellatio, cunnilingus or simulation thereof, lewd
5 exhibition of the genitals or nudity if such nudity is
6 depicted for the purpose of sexual stimulation or
7 gratification of any person who might view such depiction;

8 (2) engages in public nudity; or

9 (3) caresses or fondles the buttock, anus, vulva, female
10 breasts or genitals of himself, ~~herself or another person~~ OR <—
11 HERSELF.

12 (c) Grading.--Public indecency is punishable as follows:

13 (1) A first or second offense is a misdemeanor of the
14 second degree.

15 (2) A third or subsequent offense is a misdemeanor of
16 the first degree.

17 (d) Exemptions.--This section shall not apply to nudity as
18 defined by this section in a theatrical production in a theater
19 by a professional or amateur theatrical or musical company which
20 has serious artistic merit, provided such production is not in
21 violation of other criminal statutes. This section shall not
22 affect in any fashion the ability of the Commonwealth to
23 regulate any activity where alcoholic beverages, including malt
24 or brewed beverages, are sold or consumed.

25 (e) Definitions.--As used in this section, the following
26 words and phrases shall have the meanings given to them in this
27 subsection:

28 "Bottle club." A place operated for profit or pecuniary
29 gain, with a capacity for the assemblage of 20 or more persons
30 in which no liquor or malt or brewed beverages are sold but

where liquor or malt or brewed beverages are either provided by the operator or agents or employees of the operator for consumption on the premises or are brought into or kept at the place by the patrons or persons assembling there for use and consumption.

"Nudity" or "state of nudity." The showing of the bare human male or female genitals, pubic area, anus or vulva with less than a fully opaque clothing covering or showing of any portion of the female breast below a horizontal line across the top of the areola at its highest point with less than a fully opaque clothing covering or the showing of the covered male genitals in a discernibly turgid state. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part. A mother in the act of nursing her baby shall not be included within this definition.

"Public place." Any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, and enclosed motel and enclosed hotel

1 rooms designed and intended for sleeping accommodations shall
2 not be deemed to be a public place except where or in a manner
3 such that the person knows or has reason to know that his or her
4 state of nudity or conduct described in the definition of
5 "nudity" or "state of nudity" is observable by or in the
6 presence of persons other than the occupants of the residence or
7 those for whom the sleeping accommodations in the enclosed motel
8 or hotel room are intended, nor shall the definition of "public
9 place" include nudity in places in which nudity is necessary and
10 customarily expected outside the home, including enclosed single
11 sex public restrooms, enclosed single sex functional showers,
12 locker or dressing room facilities, doctor's offices, portions
13 of hospitals and similar places; nor shall it include a person
14 appearing in a state of nudity in a modeling class operated by a
15 proprietary school, licensed by the Commonwealth; a college,
16 junior college or university supported entirely or partly by
17 taxation or an accredited private college. Public place does not
18 include an A private facility which has been formed as a family- <—
19 oriented clothing optional facility, properly licensed by the <—
20 State. REGISTERED UNDER 25 PA. CODE CH. 191 (RELATING TO <—
21 ORGANIZED CAMPS AND CAMPGROUNDS). PUBLIC PLACE DOES NOT INCLUDE
22 A MOTION PICTURE FILMING LOCATION OR SET OPERATED FOR A GOOD
23 FAITH ARTISTIC, EDUCATIONAL OR ENTERTAINMENT PURPOSE.

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