

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 2540** Session of  
1992

INTRODUCED BY CALTAGIRONE, GAMBLE, KOSINSKI, KREBS, LEH,  
COLAIZZO, FEE, PRESTON, BILLOW, STABACK, CORRIGAN, FAJT,  
MARKOSEK, SAURMAN, ARMSTRONG, MELIO AND J. TAYLOR,  
MARCH 24, 1992

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 24, 1992

AN ACT

1 Declaring buildings used for high risk sexual conduct to be  
2 nuisances; establishing a method of procedure against those  
3 who use the buildings for those purposes; and providing for  
4 penalties.

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

7 Section 1. Legislative findings.

8 The General Assembly finds that there are within this  
9 Commonwealth commercial premises, buildings and structures, or  
10 parts thereof, which by reason of their design and use, are  
11 conducive to the spread of communicable disease of danger,  
12 including AIDS, to persons frequenting these premises, buildings  
13 and structures. The health, safety and welfare of all persons in  
14 this Commonwealth must be protected through the application and  
15 enforcement of standards regulating these premises, buildings  
16 and structures.

17 Section 2. Definitions.

18 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Building." A commercial building, structure or premises or  
4 any part thereof or facilities therein.

5 "Enclosure." A booth, stall, partitioned portion of a room  
6 or individual room containing doors, curtains, portal partitions  
7 or other nontransparent closure devices through which one cannot  
8 see or view activity taking place within the booth, stall or  
9 room.

10 "Hazardous site." A commercial building, structure or  
11 premises, or any part thereof, which is a site of high risk  
12 sexual conduct.

13 "High risk sexual conduct." Fellatio, anal intercourse or  
14 vaginal intercourse with persons who engage in sexual acts in  
15 exchange for money.

#### 16 Section 3. Building standards.

17 A building may not be constructed, used, designed or operated  
18 for the purpose of engaging in, or permitting persons to engage  
19 in, sexual activities which include high risk sexual conduct.

#### 20 Section 4. Structures prohibited.

21 (a) General rule.--A person may not own, operate, manage,  
22 rent, lease or exercise control of a building which contains:

23 (1) Partitions between subdivisions of a room, portion  
24 or part of a building, structure or premises having an  
25 aperture which is designed or constructed to facilitate  
26 sexual activity between persons on either side of the  
27 partition.

28 (2) Enclosures specifically offered to persons for a fee  
29 or as an incident to performing high risk sexual conduct.

30 (3) Enclosures which are part of a business operated on

1 the premises which offers movies or other entertainment to be  
2 viewed within the enclosure.

3 (b) Exceptions.--This section does not apply to:

4 (1) Buildings which are lawfully operating as hotels,  
5 motels, apartment complexes, condominiums or rooming houses.

6 (2) A private office used by an owner, manager or person  
7 employed on the premises for attending to the tasks of his  
8 employment, and which are not held out to the public or  
9 members of the establishment for hire or for a fee or for the  
10 purpose of viewing movies or other entertainment for a fee,  
11 and is not open to any persons other than employees.

12 (3) An enclosure having at least one side open to an  
13 adjacent public room so that the area inside is visible to  
14 persons in the adjacent public room. Such areas shall be  
15 lighted in a manner that the persons in the areas used for  
16 viewing motion pictures or other forms of entertainment are  
17 visible from the adjacent public rooms, but such lighting  
18 shall not be of such intensity as to prevent the viewing of  
19 the motion pictures or other offered entertainment.

20 Section 5. Buildings in violation.

21 Any building, structure or premises or portion or part  
22 thereof found in violation of this act is hereby declared to be  
23 a common nuisance and any person who maintains such a common  
24 nuisance commits a misdemeanor of the third degree and shall,  
25 upon conviction, be sentenced to pay a fine of not more than  
26 \$1,000 or to imprisonment for not more than one year, or both.

27 Section 6. Knowledge of violation by owner.

28 If a person, being the owner of any building, structure or  
29 premises, has knowledge or reason to believe that the building  
30 is in violation of this act, such building, structure or

1 premises shall be subject to a lien for and may be sold to pay  
2 all fines and assessed against the person guilty of maintaining  
3 the nuisance in violation of this act. The total amount of any  
4 fine and costs may be entered by the filing of a certificate  
5 thereof by the clerk of the court in which the same was imposed  
6 in the court of common pleas of the county and shall remain a  
7 lien in favor of such county until paid. Judgment may be  
8 obtained thereon and execution issued in the manner provided by  
9 law in the case of municipal liens.

10 Section 7. Action to enjoin nuisance.

11 An action to enjoin any nuisance defined in this act may be  
12 brought, in the name of this Commonwealth, by the Attorney  
13 General or by the district attorney of the county concerned.  
14 Such action shall be brought and tried as an action in equity in  
15 the court of common pleas of the county. If it is made to  
16 appear, by affidavits or otherwise, to the satisfaction of the  
17 court, or judge in vacation, that such nuisance exists, a  
18 temporary writ of injunction shall forthwith issue, directed to  
19 the owner of such building, structure or premises, and to the  
20 person so using the same, restraining such owner and such person  
21 from conducting or permitting the continuance of such nuisance  
22 until the conclusion of the hearing and decision thereon. No  
23 bond shall be required in instituting such proceedings.

24 Section 8. Abatement of nuisance.

25 It shall not be necessary for the court to find the property  
26 involved was being unlawfully used at the time of the hearing,  
27 but on finding that the material allegations of the petition are  
28 true, the court shall order that the building, structure,  
29 premises or any portion or part thereof be not used for any of  
30 the prohibited purposes. Upon judgment of the court ordering

1 such nuisance to be abated, the court may order that the  
2 building, structure, premises, or portion or part thereof, shall  
3 not be occupied or used for any purpose whatsoever for one year  
4 thereafter, but the court may, in its discretion, permit it to  
5 be occupied or used if the owner thereof shall give bond, with  
6 the sufficient surety to be approved by the court making the  
7 order, in the penal and liquidated sum of not less than \$1,000  
8 nor more than \$2,500, payable to the Commonwealth, and  
9 conditioned that the building, structure, premises, or portion  
10 or part thereof, shall not be used for any of the purposes  
11 aforesaid, and that the owner will pay all fines, costs and  
12 damages that may be assessed for any violation of this act upon  
13 said property.

14 Section 9. Service of injunction.

15 Service of any preliminary, temporary or permanent injunction  
16 shall be made personally upon the owner if such person can be  
17 found in the county. If such person cannot be found, a copy  
18 thereof shall be delivered to any adult residing in the  
19 building, structure or premises or upon the agent, if any, of  
20 the owner. If no such adult be found and service cannot be made  
21 upon such agent, then service shall be made as the court shall  
22 direct. Any person, other than the owner, who shall be served  
23 with any such notice of an injunction shall, within 24 hours  
24 thereafter, deliver the same to the owner or mail it to the  
25 owner by registered mail provided the address of the owner is  
26 known to the person served.

27 Section 10. Violation of injunction.

28 Any person or any owner of such building, structure or  
29 premises or any agent of such owner who, after any injunction or  
30 order has been granted, uses such building, structure, premises,

1 or portion or part thereof or knowingly permits the same to be  
2 used shall be subject to summary punishment as for contempt of  
3 court in the manner now provided by law.

4 Section 11. Effective date.

5 This act shall take effect in 60 days.