

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1053

Session of
1995

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TRAVAGLIO, STRITTMATTER, PETTIT AND CORRIGAN, MARCH 7, 1995

AS RE-REPORTED FROM COMMITTEE ON RULES, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 26, 1996

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, adding provisions
3 relating to the operation and suspension of adult oriented
4 establishments; and imposing penalties.

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

7 Section 1. Part II of Title 68 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subpart to read:

9 REAL AND PERSONAL PROPERTY

10 PART II

11 REAL PROPERTY

12 * * *

13 SUBPART D

14 USES OF PROPERTY

15 Chapter

16 55. Adult Oriented Establishments

CHAPTER 55

ADULT ORIENTED ESTABLISHMENTS

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§ 5501. Legislative findings and intent.

(a) Findings.--The General Assembly finds as follows:

(1) There are within this Commonwealth a number of adult oriented establishments which require special regulation by law and supervision by public safety agencies in order to protect and preserve the health, safety and welfare of patrons of these establishments, as well as the health, safety and welfare of the citizens of this Commonwealth.

(2) Statistics and studies performed in a substantial number of communities in this Commonwealth, in the United States and by the State of Delaware indicate that:

(i) large numbers of persons, primarily male, frequent adult oriented establishments, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called adult motion pictures, videotapes or live entertainment or a combination of motion pictures, videotapes and live entertainment;

1 (ii) the closed booths, cubicles, studios and rooms
2 and holes in partitions between booths, cubicles, studios
3 and rooms have been used by patrons, clients or customers
4 of adult oriented establishments for the purpose of
5 engaging in sexual acts;

6 (iii) male and female prostitutes have been known to
7 frequent the establishments in order to provide sex for
8 hire to the patrons, clients or customers within the
9 booths, cubicles and rooms;

10 (iv) doors, curtains, blinds and/or other closures
11 installed in or on the entrances or exits, or both, of
12 the booths, cubicles, studios and rooms which are closed
13 while the booths, cubicles, studios and rooms are in use
14 encourage patrons using the booths, cubicles, studios and
15 rooms to engage in sexual acts in the closures and
16 through holes in partitions between the closures with
17 prostitutes, patrons, clients or customers, thereby
18 promoting and encouraging prostitution and the commission
19 of sexual acts which result in the direct exchange of
20 bodily fluids which put the participants at high risk for
21 contracting communicable diseases, including AIDS, and
22 which cause blood, semen and urine to be deposited on the
23 floors or walls, or both, of the booths, cubicles,
24 studios and rooms, which deposits could prove detrimental
25 to the health and safety of other persons who may come in
26 contact with such deposits; and

27 (v) the reasonable regulation and supervision of
28 such adult oriented establishments tend to discourage
29 sexual acts and prostitution, and thereby promote the
30 health, safety and welfare of the patrons, clients and

1 customers of these establishments.

2 (3) The continued unregulated operation of such adult
3 oriented establishments, including, without limitation, those
4 specifically cited in paragraph (1), is and would be
5 detrimental to the general health, safety and welfare of the
6 citizens of this Commonwealth.

7 (4) The Constitution of Pennsylvania grants to the
8 General Assembly power, especially police power, to enact
9 reasonable legislation to regulate and supervise adult
10 oriented establishments in order to protect the public
11 health, safety and welfare.

12 (b) Intent.--It is not the intent of the General Assembly in
13 enacting this legislation to deny to any person rights of speech
14 protected by the Constitution of the United States or the
15 Constitution of Pennsylvania, or both, nor is it the intent of
16 the General Assembly to impose by this chapter any additional
17 limitations or restrictions on the contents of any communicative
18 materials, including sexually oriented films, videotapes, books
19 and other materials. Further, by enacting this legislation, the
20 General Assembly does not intend to deny or restrict the rights
21 of any adult to obtain or view, or both, any sexually oriented
22 materials protected by the Constitution of the United States or
23 the Constitution of Pennsylvania, or both, nor does it intend to
24 restrict or deny any constitutionally protected rights that
25 distributors or exhibitors of sexually oriented materials may
26 have to sell, distribute or exhibit these materials.

27 § 5502. Definitions.

28 The following words and phrases when used in this chapter
29 shall have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

1 "Adult bookstore." An establishment having a substantial or
2 significant portion of its stock and trade in, or an
3 establishment which, as one of its principal business purposes,
4 offers for sale, books, films, video cassettes or magazines and
5 other periodicals which are distinguished or characterized by
6 their emphasis on matter depicting, describing or relating to
7 specified sexual activities or specified anatomical areas, and
8 in conjunction therewith has facilities for the presentation of
9 adult entertainment for observation by patrons.

10 "Adult entertainment."

11 (1) An exhibition of any adult oriented motion pictures,
12 meaning those distinguished or characterized by an emphasis
13 on matter depicting, describing or relating to specified
14 sexual activities or specified anatomical areas.

15 (2) A live performance, display or dance of any type,
16 which has as a significant or substantial portion of the
17 performance any actual or simulated performance of specified
18 sexual activities or exhibition and viewing of specified
19 anatomical areas, removal of articles of clothing or
20 appearing unclothed, pantomiming, modeling or any other
21 personal services offered customers.

22 "Adult mini-motion picture theater." An enclosed building
23 with a capacity of less than 50 persons regularly used for
24 presenting material distinguished or characterized by an
25 emphasis on matter depicting, describing or relating to
26 specified sexual activities or specified anatomical areas for
27 observation by patrons.

28 "Adult motion picture theater." An enclosed building with a
29 capacity of 50 or more persons regularly used for presenting
30 material distinguished or characterized by an emphasis on matter

1 depicting, describing or relating to specified sexual activities
2 or specified anatomical areas for observation by patrons.

3 "Adult oriented establishment." The term includes, without
4 limitation, the following establishments when operated for
5 profit, whether direct or indirect:

6 (1) Adult bookstores.

7 (2) Adult motion picture theaters.

8 (3) Adult mini-motion picture theaters.

9 (4) Any premises to which the public, patrons or members
10 are invited or admitted and which are so physically arranged
11 as to provide booths, cubicles, rooms, studios, compartments
12 or stalls separate from the common areas of the premises for
13 the purpose of viewing adult oriented motion pictures, or
14 where an entertainer provides adult entertainment to a member
15 of the public, a patron or a member.

16 (5) An adult entertainment studio or any premises that
17 are physically arranged and used as such, whether advertised
18 or represented as an adult entertainment studio, rap studio,
19 exotic dance studio, encounter studio, sensitivity studio,
20 modeling studio or any other term of like import.

21 The term "booths, cubicles, rooms, studios, compartments or
22 stalls" for purposes of defining adult oriented establishments
23 does not mean enclosures which are private offices used by the
24 owner, manager or persons employed on the premises for attending
25 to the tasks of their employment, and which are not held out to
26 the public for the purpose of viewing motion pictures or other
27 entertainment for a fee, and which are not open to any persons
28 other than employees.

29 "Employee." Any and all persons, including independent
30 contractors, who work in or at or render any service directly

1 related to the operation of an adult oriented establishment.

2 "Entertainer." A person who provides entertainment within an
3 adult oriented establishment, whether or not a fee is charged or
4 accepted for entertainment and whether or not entertainment is
5 provided as an employee or an independent contractor.

6 "Inspector." An employee of a municipality's public health
7 department authorized and designated by the director of the
8 department, an employee of a municipality's department of
9 inspections and permits authorized and designated by the
10 director of the department, an employee of a municipality's
11 police department authorized by the commanding officer of the
12 police department or other persons designated by the governing
13 body of a municipality to inspect premises regulated under this
14 act, to cooperate in taking the required actions authorized by
15 this act where violations are found on a premises and to request
16 correction of unsatisfactory conditions found on a premise.

17 "Minor." A person under 18 years of age.

18 "Operator." A person, partnership or corporation operating,
19 conducting or maintaining an adult oriented establishment.

20 "Sexual activities." The term does not include any of the
21 following:

22 (1) Medical publications or films or bona fide
23 educational publications or films.

24 (2) Any art or photography publications which devote at
25 least 25% of the lineage of each issue to articles and
26 advertisements dealing with subjects of art or photography.

27 (3) Any news periodical which reports or describes
28 current events and which from time to time publishes
29 photographs of nude or seminude persons in connection with
30 the dissemination of the news.

(4) Any publications or films which describe and report different cultures and which from time to time publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the populations.

"Specified anatomical areas."

(1) Less than completely and opaquely covered:

(i) human genitals or pubic region;

(ii) buttocks; or

(iii) female breasts below a point immediately above the top of the areola.

(2) Human male genitals in a discernible turgid state, even if completely opaquely covered.

"Specified sexual activities." The term includes any of the following:

(1) Human genitals in a state of sexual stimulation or arousal.

(2) Acts of human masturbation, sexual intercourse or sodomy.

(3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

§ 5503. Requirements for adult oriented establishments.

(a) Loitering by minors prohibited.--No operator or employee of an adult oriented establishment shall permit any minor to loiter in any part of the establishment, including parking lots immediately adjacent to the establishment used by patrons of an adult oriented establishment.

(b) Interior plan.--Every adult oriented establishment doing business in this Commonwealth shall be well lighted at all times and be physically arranged in such a manner that the entire

1 interior portion of the booths, cubicles, rooms or stalls where
2 adult entertainment is provided shall be clearly visible from
3 the common areas of the premises. Visibility into such booths,
4 cubicles, rooms or stalls shall not be blocked or obscured by
5 doors, curtains, partitions, drapes or any other obstruction
6 whatsoever. It shall be unlawful to install enclosed booths,
7 cubicles, rooms or stalls within adult oriented establishments
8 for whatever purpose, but especially for the purpose of
9 providing for the secluded viewing of adult oriented motion
10 pictures or other types of adult oriented entertainment.

11 (c) Certain apertures prohibited.--No adult oriented
12 establishment shall contain partitions between subdivisions of a
13 room or portions or parts of a building, structure or premise
14 with an aperture which is designed or constructed to facilitate
15 sexual activity between persons on either side of the
16 partitions.

17 (d) Illumination and visibility.--The operator of each adult
18 oriented establishment shall be responsible for and shall
19 provide that any room or other area used for the purpose of
20 viewing adult oriented motion pictures or other types of live
21 adult entertainment shall be well lighted and readily accessible
22 at all times and shall be continuously open to view in its
23 entirety. The premises shall be equipped with overhead lighting
24 fixtures of sufficient intensity to illuminate every place to
25 which patrons are permitted access at an illumination of not
26 less than one footcandle as measured at the floor level. It
27 shall be the duty of the operator and the operator's agents to
28 ensure that the illumination required by this subsection is
29 maintained at all times that a patron is present in the
30 premises.

1 § 5504. Liability of operator.

2 Every act or omission by an employee constituting a violation
3 of this chapter shall be deemed the act or omission of the
4 operator if the act or omission occurs either with the
5 authorization, knowledge or approval of the operator or as a
6 result of the operator's negligent failure to supervise the
7 employee's conduct, and the operator shall be punishable for the
8 act or omission in the same manner as if the operator committed
9 the act or caused the omission.

10 § 5505. Establishments open for inspection.

11 All adult oriented establishments shall be open to inspection
12 at all reasonable times by inspectors.

13 § 5506. Civil action to enjoin or abate violations.

14 (a) Action authorized.--An action to enjoin or abate a
15 violation of this chapter may be brought in the name of the
16 Commonwealth of Pennsylvania by the Attorney General, the
17 district attorney of the county concerned or the solicitor of
18 the municipality in which the adult oriented establishment is
19 located. The action shall be brought and tried as an action in
20 equity in the court of common pleas of the county in which the
21 adult oriented establishment is located.

22 (b) Procedure.--

23 (1) If it is made to appear, by affidavits or otherwise,
24 to the satisfaction of the court that a violation exists, a
25 temporary writ of injunction shall forthwith issue, directed
26 to the operator of the adult entertainment establishment or
27 the owner of the premises, or both, restraining the operator
28 or owner from continuing or permitting the continuation of
29 any violation or violations of this chapter until the
30 conclusion of the hearing and a decision by the court. No

1 bond shall be required in instituting such proceedings. This
2 chapter, insofar as it provides for methods of service and
3 bond, shall not be deemed to be suspended or affected by the
4 Pennsylvania Rules of Civil Procedure governing the action in
5 equity.

6 (2) It shall not be necessary for the court to find the
7 property involved was being unlawfully used at the time of
8 the hearing, but, on finding that the material allegations of
9 the petition are true, the court shall order that neither the
10 premises nor any part of the premises be used in violation of
11 this chapter. Upon judgment of the court ordering the
12 violations to be abated, the court may order that neither the
13 premises nor any part of the premises shall be occupied or
14 used for any purpose for up to one year following the date of
15 the court's order, but the court may, in its discretion,
16 permit the premises to be occupied or used by the operator or
17 owner if the operator or owner, or both, posts a bond or a
18 joint bond in the discretion of the court with sufficient
19 surety to be approved by the court in the penal and
20 liquidated sum of not less than \$1,000 nor more than \$2,500,
21 payable to the Commonwealth of Pennsylvania and conditioned
22 that neither the building nor a part of the building be used
23 in violation of this chapter, and that the operator will pay
24 all fines, costs and damages that may be assessed for any
25 violation of this chapter upon the premises.

26 (3) Service of any preliminary or permanent injunction
27 shall be made personally upon the operator and owner of the
28 premises if such persons can be found in the county. If the
29 operator or owner cannot be found, a copy of the order shall
30 be delivered to any employee of the operator on the

1 establishment premises or, in the case of the owner, upon an
2 agent, if any. If no employee or agent can be found or
3 service cannot be made on an employee or agent of the owner,
4 then service shall be made as the court may direct. Any
5 person other than the operator or owner who shall be served
6 with any notice of an injunction shall within 24 hours
7 thereafter deliver the notice to the operator or owner, as
8 the case may be, or mail it to the operator or owner by
9 registered mail if the address of the operator or owner, as
10 the case may be, is known to the person served.

11 § 5507. Violation of abatement order or injunction.

12 An operator or owner of an adult entertainment establishment
13 or any agent of the operator or owner who after any injunction
14 has been granted uses the premises or any part of the premises,
15 or knowingly permits the premises or any part of the premises to
16 be used in violation of an order of abatement or injunction,
17 shall be subject to summary punishment as for contempt of court,
18 in the manner now provided by law.

19 § 5508. Penalty.

20 A person violating any provision of this chapter commits a
21 ~~misdemeanor~~ SUMMARY OFFENSE and shall, upon conviction, be <—
22 sentenced to pay a fine of not more than ~~\$1,000~~ \$300 or to <—
23 imprisonment for not more than ~~30~~ 90 days, or both. <—

24 § 5509. Existing remedies preserved.

25 This chapter shall not be deemed to affect any remedy
26 available against an adult entertainment establishment or adult
27 book store.

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