

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

193P0164

HOUSE BILL NO. 1151

Introduced by: Representatives Steele, Brunner, Gillespie, Glenski, Hunt, Koistinen, Noem, Novstrup (Al), Novstrup (David), Olson (Russell), Rhoden, and Wick and Senators Greenfield, Albers, Duenwald, Hunhoff, Maher, Schmidt (Dennis), and Smidt (Orville)

1 FOR AN ACT ENTITLED, An Act to regulate the location and hours of operation of adult
2 oriented businesses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No adult oriented business may be located within one-fourth mile of a child
5 welfare agency, a private or public school, a public playground, a public recreational facility,
6 a residence, or a place of worship. For the purposes of this section, measurements shall be made
7 in a straight line in all directions, without regard to intervening structures or objects, from the
8 nearest point on the property line of a parcel containing an adult oriented business to the nearest
9 point on the property line of a parcel containing a child welfare agency, a private or public
10 school, a public playground, a public recreational facility, a residence, or a place of worship. An
11 adult oriented business lawfully operating in conformity with this section does not violate this
12 section if a child welfare agency, a private or public school, a public playground, a public
13 recreational facility, a residence, or a place of worship subsequently locates within one-fourth
14 mile of the adult oriented business. A violation of this section is a Class 1 misdemeanor. Each



1 day of violation constitutes a separate offense.

2 Section 2. No adult arcade, adult bookstore or video store, adult cabaret, adult motion
3 picture theater, adult theater, escort agency, or nude model studio may remain open at any time
4 between the hours of 1:00 a.m. and 8:00 a.m. on Monday through Saturday and between the
5 hours of 1:00 a.m. and 12:00 noon on Sunday. A violation of this section is a Class 1
6 misdemeanor. Each day of violation constitutes a separate offense.

7 Section 3. Section 1 of this Act does not prohibit any county or municipality from enacting
8 and enforcing any ordinance that regulates the location of an adult oriented business.

9 Section 4. Section 2 of this Act does not prohibit any county or municipality from enacting
10 and enforcing any ordinance that regulates an adult arcade, adult bookstore or video store, adult
11 cabaret, adult motion picture theater, adult theater, escort agency, or nude model studio in a
12 manner that is at least as restrictive as section 2 of this Act.

13 Section 5. If there is reason to believe that a violation of section 1 of this Act is being
14 committed in any county or city, the state's attorney of the county shall, or a citizen of this state
15 who resides in the county or city in the citizen's own name may, maintain an action to abate and
16 prevent the violation and to enjoin perpetually any person who is committing the violation and
17 the owner, lessee, or agent of the building or place in or on which the violation is occurring from
18 directly or indirectly committing or permitting the violation.

19 Section 6. Terms used in this Act mean:

20 (1) "Adult arcade," any place to which the public is permitted or invited and in which
21 coin-operated or slug-operated or electronically, electrically, or mechanically
22 controlled still or motion picture machines, projectors, or other image producing
23 devices are maintained to show images involving specific sexual activities or specific
24 anatomical areas to persons in booths or viewing rooms;

- 1 (2) "Adult bookstore or video store," a commercial establishment that offers for sale or
2 rent any of the following as one of its principal business purposes:
- 3 (a) Books, magazines, periodicals, or other printed matter, photographs, films,
4 motion pictures, videocassettes or reproductions or slides, or other visual
5 representations that depict or describe specific sexual activities or specific
6 anatomical areas;
- 7 (b) Instruments, devices, or paraphernalia that are designed for use in connection
8 with specific sexual activities;
- 9 (3) "Adult cabaret," any nightclub, bar, restaurant, or other similar commercial
10 establishment that regularly features:
- 11 (a) Persons who appear in a state of nudity or seminudity;
- 12 (b) Live performances that are characterized by the exposure of specific
13 anatomical areas or specific sexual activities;
- 14 (c) Films, motion pictures, videocassettes, slides or other photographic
15 reproductions that are characterized by the depiction or description of specific
16 sexual activities or specific anatomical areas;
- 17 (4) "Adult motion picture theater," a commercial establishment in which, for any form
18 of consideration, films, motion pictures, videocassettes, slides, or other similar
19 photographic reproductions that are characterized by the depiction or description of
20 specific sexual activities or specific anatomical areas are predominantly shown;
- 21 (5) "Adult oriented business," any adult arcade, adult bookstore or video store, cabaret,
22 adult live entertainment establishment, adult motion picture theater, adult theater,
23 massage establishment that offers adult service, or nude model studios;
- 24 (6) "Adult service," dancing, serving food or beverages, modeling, posing, wrestling,

1 singing, reading, talking, listening, or other performances or activities conducted for
2 any consideration in an adult oriented business by a person who is nude or seminude
3 during all or part of the time that the person is providing the service;

4 (7) "Adult theater," a theater, concert hall, auditorium, or similar commercial
5 establishment that predominantly features persons who appear in a state of nudity or
6 who engage in live performances that are characterized by the exposure of specific
7 anatomical areas or specific sexual activities;

8 (8) "Escort," a person who for consideration agrees or offers to act as a companion,
9 guide, or date for another person or who agrees or offers to privately model lingerie
10 or to privately perform a striptease for another person;

11 (9) "Escort agency," any person or business association that furnishes, offers to furnish,
12 or advertises the furnishing of escorts as one of its primary business purposes for any
13 fee, tip, or other consideration;

14 (10) "Massage establishment," an establishment in which a person, firm, association, or
15 corporation engages in or permits massage activities, including any method of
16 pressure on, friction against, stroking, kneading, rubbing, tapping, pounding,
17 vibrating, or stimulating of external soft parts of the body with the hands or with the
18 aid of any mechanical apparatus or electrical apparatus or appliance. This subdivision
19 does not apply to:

20 (a) Physicians who are licensed pursuant to chapter 36-4 or a podiatrist licensed
21 pursuant to chapter 36-8;

22 (b) Registered nurses or licensed practical nurses who are licensed pursuant to
23 chapter 36-9;

24 (c) Physician assistants who are licensed pursuant to chapter 36-4A or certified

1 nurse practitioners and certified nurse midwives who are licensed pursuant to
2 chapter 36-9A;

3 (d) Physical therapists licensed pursuant to chapter 36-10;

4 (e) Athletic trainers licensed pursuant to chapter 36-29;

5 (f) Massage therapists licensed pursuant to chapter 36-35;

6 (11) "Nude model studio," a place in which a person who appears in a state of nudity or
7 who displays specific anatomical areas is observed, sketched, drawn, painted,
8 sculptured, photographed, or otherwise depicted by other persons who pay money or
9 other consideration. The term, nude model studio, does not include a proprietary
10 school that is licensed by this state, a college, or a university that is supported entirely
11 or in part by taxation, a private college or university that maintains and operates
12 educational programs in which credits are transferable to a college or university that
13 is supported entirely or in part by taxation or a structure to which the following
14 apply:

15 (a) A sign is not visible from the exterior of the structure and no other advertising
16 appears indicating that a nude person is available for viewing;

17 (b) A student must enroll at least three days in advance of a class in order to
18 participate; and

19 (c) No more than one nude or seminude model is on the premises at any time;

20 (12) "Nude," "nudity," or "state of nudity," any of the following:

21 (a) The appearance of a human anus, genitals, or a female breast below a point
22 immediately above the top of the areola;

23 (b) A state of dress that fails to opaquely cover a human anus, genitals, or a
24 female breast below a point immediately above the top of the areola;

- 1 (13) "Place of worship," a structure where persons regularly assemble for worship,
2 ceremonies, rituals, and education relating to a particular form of religious belief and
3 which a reasonable person would conclude is a place of worship by reason of design,
4 signs, or architectural or other features;
- 5 (14) "Residence," a permanent dwelling place;
- 6 (15) "Seminude," a state of dress in which clothing covers no more than the genitals,
7 pubic region, and female breast below a point immediately above the top of the
8 areola, as well as portions of the body that are covered by supporting straps or
9 devices;
- 10 (16) "Specific anatomical areas," any of the following:
 - 11 (a) A human anus, genitals, the pubic region, or a female breast below a point
12 immediately above the top of the areola that is less than completely and
13 opaquely covered;
 - 14 (b) Male genitals in a discernibly turgid state even if completely and opaquely
15 covered;
- 16 (17) "Specific sexual activities," any of the following:
 - 17 (a) Human genitals in a state of sexual stimulation or arousal;
 - 18 (b) Sex acts, normal or perverted, actual or simulated, including acts of human
19 masturbation, sexual intercourse, oral copulation, or sodomy;
 - 20 (c) Fondling or other erotic touching of the human genitals, pubic region,
21 buttocks, anus, or female breast; or
 - 22 (d) Excretory functions as part of or in connection with any of the activities under
23 subsection (a), (b), or (c) of this subdivision.