

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 443

Introduced by Christensen, 44.

Read first time January 20, 2009

Committee: General Affairs

A BILL

1 FOR AN ACT relating to adult businesses and sexually oriented
2 businesses; to provide for the regulation of such
3 businesses; to state intent; to define terms; to provide
4 penalties; and to provide severability.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that:

2 (1) The purpose of sections 1 to 4 of this act is to
3 promote the health, safety, and general welfare of the people of
4 the state by establishing reasonable regulations to prevent the
5 deleterious secondary effects of adult businesses and sexually
6 oriented businesses. The regulations in sections 1 to 4 of this
7 act have neither the purpose nor effect of imposing a limitation
8 or restriction on the content or reasonable access to communicative
9 materials, including sexually oriented materials;

10 (2) Adult businesses and sexually oriented businesses,
11 as a category of commercial uses, are associated with a wide
12 variety of adverse secondary effects, including, but not limited
13 to, lewdness, public indecency, prostitution, potential spread
14 of disease, illicit drug use and drug trafficking, personal
15 and property crimes, negative impacts on surrounding properties,
16 blight, litter, and sexual assault and exploitation; and

17 (3) Each of the negative secondary effects listed in
18 subdivision (2) of this section constitutes a harm which the state
19 has a substantial governmental interest in preventing and abating.
20 This substantial government interest in preventing secondary
21 effects is independent of a comparative analysis between adult
22 businesses or sexually oriented businesses and nonsexually oriented
23 businesses. The cases and documentation relied on in sections 1
24 to 4 of this act are reasonably believed to be relevant to these
25 secondary effects.

1 Sec. 2. For purposes of sections 1 to 4 of this act:

2 (1) Adult business means a nightclub, bar, restaurant, or
3 another similar establishment in which a person appears in a state
4 of sexually explicit nudity or seminudity in the performance of
5 their duties;

6 (2) Employee means a person who performs a service on the
7 premises of an adult business or a sexually oriented business on
8 a full-time, part-time, or contractual basis, whether or not the
9 person is denominated an employee, independent contractor, agent,
10 or otherwise. Employee does not include a person exclusively on
11 the premises for repair or maintenance of the premises or for the
12 delivery of goods to the premises;

13 (3) Operate means to cause to function or to put or keep
14 in a state of doing business;

15 (4) Operator means a person on the premises of an adult
16 business or a sexually oriented business who causes the business to
17 function or who puts or keeps in operation the business or who is
18 authorized to manage the business or exercise overall operational
19 control of the business premises;

20 (5) Patron means a person on the premises of an adult
21 business or a sexually oriented business except an operator or an
22 employee of that adult business or sexually oriented business or a
23 person who is on the premises exclusively for repair or maintenance
24 of the premises or for the delivery of goods to the premises;

25 (6) Premises means the real property upon which the

1 adult business or sexually oriented business is located and all
2 appurtenances and buildings on the property, including, but not
3 limited to, the adult business or sexually oriented business, the
4 grounds, private walkways, parking lots, and adjacent parking
5 garages under the ownership, control, or supervision of the
6 licensee;

7 (7) Seminudity means a state of dress in which opaque
8 clothing fails to cover the genitals, anus, anal cleft or cleavage,
9 pubic area, vulva, nipple and areola of the female breast below a
10 horizontal line across the top of the areola at its highest point.
11 Seminudity includes the entire lower portion of the female breast,
12 but does not include any portion of the cleavage of the human
13 female breast exhibited by wearing clothing provided the areola is
14 not exposed in whole or in part;

15 (8) Sexually explicit nudity means the showing of:

16 (a) Uncovered, or less than opaquely covered, human
17 genitals, pubic area, or buttocks or the nipple or any portion of
18 the areola of the human female breast; or

19 (b) Covered human male genitals in a discernibly turgid
20 state;

21 (9) Sexually oriented business means a business offering
22 its patrons goods of which a substantial portion are sexually
23 oriented materials. A business in which more than ten percent
24 of the display space is used for sexually oriented materials is
25 presumed to be a sexually oriented business;

1 (10) Sexually oriented entertainment activity means the
2 sale, rental, or exhibition, for any form of consideration, of
3 books, films, video cassettes, magazines, visual images, or live
4 performances which are characterized by an emphasis on the exposure
5 or display of any specified anatomical areas or specified sexual
6 activity;

7 (11) Sexually oriented material means textual, pictorial,
8 or three-dimensional material that depicts nudity, sexual conduct,
9 sexual enticement, or sadomasochistic abuse in a way that is
10 patently offensive to the average person applying contemporary
11 adult community standards with respect to what is suitable for
12 minors. Sexually oriented materials include obscene materials as
13 obscene is defined in section 28-807;

14 (12) Specified anatomical areas means human genitals,
15 pubic region, buttocks, and female breast below a point immediately
16 above the top of the areola; and

17 (13) Specified sexual activity means intercourse, oral
18 copulation, masturbation, sodomy, or excretory functions as a part
19 of or in connection with any of these activities.

20 Sec. 3. (1) An adult business or sexually oriented
21 business shall not be or remain open for business between 11:00
22 p.m. and 8:00 a.m., except if the business holds a liquor license
23 pursuant to Chapter 53, it may remain open until the hour specified
24 in such license if it does not conduct, offer, or allow sexually
25 oriented entertainment activity between the hours of 11:00 p.m. and

1 8:00 a.m.

2 (2) While on the premises of an adult business or a
3 sexually oriented business:

4 (a) An employee, while in a state of sexually explicit
5 nudity or while seminude, shall not knowingly do the following:

6 (i) Appear in the view of a patron unless the employee is
7 at least six feet from all patrons and on a stage at least two feet
8 above the floor;

9 (ii) Touch a patron or the clothing of a patron; or

10 (iii) While in the view of a patron, touch another person
11 who is in a state of sexually explicit nudity or while seminude;

12 (b) No patron shall knowingly touch an employee while
13 that employee is in a state of sexually explicit nudity or while
14 seminude or touch the clothing or costume of an employee while
15 that employee is in a state of sexually explicit nudity or while
16 seminude; and

17 (c) An employee of an adult business or a sexually
18 oriented business who regularly appears in a state of sexually
19 explicit nudity or while seminude on the premises of that adult
20 business or sexually oriented business shall not knowingly be or
21 remain within six feet of a patron.

22 (3) A person who violates the provisions of subsection
23 (1) of this section is guilty of a Class I misdemeanor.

24 (4) A person who violates the provisions of subsection
25 (2) of this section is guilty of a Class IV misdemeanor.

1 Sec. 4. No adult business or sexually oriented business
2 established after the effective date of this act shall be located
3 within one-fourth mile of a child care facility, a private or
4 public school, a public playground, a public recreational facility,
5 a residence, or a place of worship. For purposes of this section,
6 measurements shall be made in a straight line in all directions,
7 without regard for intervening structures or objects, from the
8 nearest point on the property line of a parcel containing
9 an adult business or sexually oriented business to the nearest
10 point on the property line of a parcel containing a child care
11 facility, a private or public school, a public playground, a public
12 recreational facility, a residence, or a place of worship. An adult
13 business or sexually oriented business operating in conformity
14 with this section does not violate this section if a child care
15 facility, a private or public school, a public playground, a
16 public recreational facility, a residence, or a place of worship
17 subsequently locates within one-fourth mile of the adult business
18 or sexually oriented business. A person who violates this section
19 is guilty of a Class I misdemeanor. Each day of the violation
20 constitutes a separate offense.

21 Sec. 5. If any section in this act or any part of any
22 section is declared invalid or unconstitutional, the declaration
23 shall not affect the validity or constitutionality of the remaining
24 portions.