

REFERENCE TITLE: adult oriented businesses; regulation; offense

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2765

Introduced by
Representative Court

AN ACT

AMENDING SECTION 11-811, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1412; RELATING TO ADULT ORIENTED BUSINESSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-811, Arizona Revised Statutes, is amended to
3 read:

4 11-811. Zoning ordinance; zoning districts; definitions

5 A. Pursuant to this article, the board of supervisors may adopt a
6 zoning ordinance in order to conserve and promote the public health, safety,
7 convenience and general welfare. The zoning ordinance and all rezonings and
8 zoning regulations amendments adopted under this article shall be consistent
9 with and conform to the adopted comprehensive plan. In addition to the other
10 matters that are required or authorized under this section and article 1 of
11 this chapter, the zoning ordinance:

12 1. Shall show the zoning districts designated as appropriate for
13 various classes of residential, business and industrial uses and shall
14 provide for the establishment of setback lines and other plans providing for
15 adequate light, air and parking facilities and for expediting traffic within
16 the districts.

17 2. May establish the percentage of a lot or parcel that may be covered
18 by buildings and the size of yards, courts and other open spaces.

19 3. Shall consider access to incident solar energy.

20 4. May provide for retirement community zoning districts.

21 5. May provide for the regulation and use of business licenses, adult
22 oriented business manager permits and adult service provider permits in
23 conjunction with the establishment or operation of adult oriented businesses
24 and facilities, including adult arcades, adult bookstores or video stores,
25 cabarets, adult live entertainment establishments, adult motion picture
26 theaters, adult theaters, massage establishments and nude model studios.
27 With respect to cabarets, the ordinance shall not conflict with specific
28 statutory or valid regulatory requirements applicable to persons licensed to
29 dispense alcoholic beverages, but the ordinance may include regulation of the
30 age and conduct of erotic entertainers in a manner at least as restrictive as
31 rules adopted under title 4. Notwithstanding section 11-812, a county in
32 regulating or licensing businesses and facilities pursuant to this paragraph
33 may impose reasonable operating requirements that affect the existing uses of
34 businesses and facilities.

35 6. Shall designate and zone appropriate areas of reasonable size in
36 which there may be established with reasonable permanency canneries,
37 fertilizer plants, refineries, commercial feed lots, meat packing plants,
38 tallow works and other like businesses. A dairy operation, including areas
39 designated for the raising of replacement heifers or bulls owned by the same
40 dairy operation, is not subject to this paragraph, and is a general
41 agricultural purpose under subsection C, paragraph 2 of this section and
42 section 11-812, subsection A, paragraph 2. A replacement heifer or bull
43 raising operation of a dairy that is not on contiguous property of the dairy
44 is subject to this paragraph unless the operation begins within one-quarter
45 mile of the dairy.

1 B. To carry out the purposes of this article, the board may adopt
2 overlay zoning districts and regulations applicable to particular buildings,
3 structures and land within individual zones. For the purposes of this
4 subsection, "overlay zoning district" means a special zoning district that
5 includes regulations that modify regulations in another zoning district with
6 which the overlay zoning district is combined. Overlay zoning districts and
7 regulations shall be adopted pursuant to section 11-813. The provisions of
8 overlay zoning shall apply retroactively to authorize overlay zoning
9 districts and regulations adopted before April 20, 1993.

10 C. This section does not authorize:

11 1. The imposition of dedications, exactions, fees or other
12 requirements that are not otherwise authorized by law.

13 2. The regulation or restriction of the use or occupation of land or
14 improvements for railroad, mining, metallurgical, grazing or general
15 agricultural purposes, if the tract concerned is five or more contiguous
16 commercial acres.

17 D. For the purposes of this section:

18 1. "Adult arcade" means any place to which the public is permitted or
19 invited and in which coin-operated or slug-operated or electronically,
20 electrically or mechanically controlled still or motion picture machines,
21 projectors or other image producing devices are REGULARLY maintained to show
22 images ~~involving~~ TO FIVE PERSONS OR FEWER PER MACHINE AT ANY ONE TIME AND THE
23 IMAGES DISPLAYED ARE CHARACTERIZED BY THE IMAGE'S EMPHASIS ON MATTER
24 EXHIBITING specific sexual activities or specific anatomical areas ~~to persons~~
25 ~~in booths or viewing rooms.~~

26 2. "Adult bookstore or video store" means a commercial establishment
27 that offers for sale or rent any of the following as one of its principal
28 business purposes:

29 (a) Books, magazines, periodicals or other printed matter,
30 photographs, films, motion pictures, videocassettes or reproductions or
31 slides or other visual representations ~~that depict or describe~~ THAT ARE
32 CHARACTERIZED BY AN EMPHASIS ON THE DISPLAY OF specific sexual activities or
33 specific anatomical areas.

34 (b) Instruments, devices or paraphernalia that are designed for use in
35 connection with specific sexual activities. THIS SUBDIVISION DOES NOT
36 INCLUDE DEVICES THAT ARE PRIMARILY INTENDED TO PROTECT AGAINST SEXUALLY
37 TRANSMITTED DISEASES OR PREVENT PREGNANCY.

38 3. "Adult live entertainment establishment" means an establishment
39 that REGULARLY features either:

40 (a) Persons who appear in a state of nudity OR SEMINUDITY.

41 (b) Live performances that are characterized by the exposure of
42 specific anatomical areas ~~or specific sexual activities.~~

43 4. "Adult motion picture theater" means a commercial establishment in
44 which for any form of consideration films, motion pictures, videocassettes,
45 slides or other similar photographic reproductions that are characterized by
46 ~~the depiction or description~~ THEIR EMPHASIS ON THE DISPLAY of specific sexual

1 activities or specific anatomical areas are ~~predominantly~~ REGULARLY shown TO
2 MORE THAN FIVE PERSONS.

3 5. "Adult oriented business" means adult arcades, adult bookstores or
4 video stores, cabarets, adult live entertainment establishments, adult motion
5 picture theaters, adult theaters, massage establishments that offer adult
6 service or nude model studios.

7 6. "Adult oriented business manager" means a person on the premises of
8 an adult oriented business who is authorized to exercise overall operational
9 control of the business.

10 7. "Adult service" means dancing, serving food or beverages, modeling,
11 posing, wrestling, singing, reading, talking, listening or other performances
12 or activities conducted for any consideration in an adult oriented business
13 by a person who is nude or seminude during all or part of the time that the
14 person is providing the service.

15 8. "Adult service provider" or "erotic entertainer" means any natural
16 person who provides an adult service.

17 9. "Adult theater" means a theater, concert hall, auditorium or
18 similar commercial establishment that ~~predominantly~~ REGULARLY features
19 persons who appear in a state of nudity OR SEMINUDITY or who engage in live
20 performances that are characterized by the exposure of specific anatomical
21 areas ~~or specific sexual activities~~.

22 10. "Cabaret" means an adult oriented business licensed to provide
23 alcoholic beverages pursuant to title 4, chapter 2, article 1.

24 11. "CHARACTERIZED BY" MEANS DESCRIBING THE ESSENTIAL CHARACTER OR
25 DOMINANT THEME OF AN ITEM.

26 ~~11-~~ 12. "Discernibly turgid state" means the state of being visibly
27 swollen, bloated, inflated or distended.

28 ~~12-~~ 13. "Massage establishment" means an establishment in which a
29 person, firm, association or corporation engages in or permits massage
30 activities, including any method of pressure on, friction against, stroking,
31 kneading, rubbing, tapping, pounding, vibrating or stimulating of external
32 soft parts of the body with the hands or with the aid of any mechanical
33 apparatus or electrical apparatus or appliance. This paragraph does not
34 apply to:

35 (a) Persons who are licensed pursuant to title 32, chapter 7, 8, 13,
36 14 or 17.

37 (b) Registered nurses, licensed practical nurses or technicians who
38 are acting under the supervision of a physician who is licensed pursuant to
39 title 32, chapter 13 or 17.

40 (c) Registered nurse practitioners who are licensed pursuant to title
41 32, chapter 15.

42 (d) Persons who are employed or acting as trainers for a bona fide
43 amateur, semiprofessional or professional athlete or athletic team.

44 (e) Persons who are licensed pursuant to title 32, chapter 3 or 5 if
45 the activity is limited to the head, face or neck.

1 ~~13.~~ 14. "Nude model studio" means a place in which a person who
2 appears in a state of nudity or who displays specific anatomical areas is
3 observed, sketched, drawn, painted, sculptured, photographed or otherwise
4 depicted by other persons who pay money or other consideration. Nude model
5 studio does not include a proprietary school that is licensed by this state,
6 a college, community college or university that is supported entirely or in
7 part by taxation, a private college or university that maintains and operates
8 educational programs in which credits are transferable to a college,
9 community college or university that is supported entirely or in part by
10 taxation or a structure to which the following apply:

11 (a) A sign is not visible from the exterior of the structure and no
12 other advertising appears indicating that a nude person is available for
13 viewing.

14 (b) A student must enroll at least three days in advance of a class in
15 order to participate.

16 (c) No more than one nude or seminude model is on the premises at any
17 time.

18 ~~14.~~ 15. "Nude", "nudity" or "state of nudity" means ~~any of the~~
19 ~~following:~~

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

22 ~~(b) A state of dress that fails to opaquely cover a human anus,~~
23 ~~genitals or a female breast below a point immediately above the top of the~~
24 ~~areola~~ THE SHOWING OF A HUMAN'S GENITALS, PUBIC AREA, VULVA OR ANUS WITH LESS
25 THAN A FULLY OPAQUE COVERING OR THE SHOWING OF THE FEMALE BREAST WITH LESS
26 THAN A FULLY OPAQUE COVERING OF ANY PART OF THE NIPPLE AND AREOLA.

27 ~~15.~~ 16. "Principal business purposes" means that a commercial
28 establishment derives fifty per cent or more of its gross income from the
29 sale or rental of items listed in paragraph 2 of this subsection.

30 17. "REGULARLY" MEANS THE CONSISTENT AND REPEATED DOING OF AN ACT ON AN
31 ONGOING BASIS.

32 ~~16.~~ 18. "Seminude" OR "SEMINUDITY" means ~~a state of dress in which~~
33 ~~clothing covers no more than the genitals, pubic region and female breast~~
34 ~~below a point immediately above the top of the areola, as well as portions of~~
35 ~~the body that are covered by supporting straps or devices~~ THE SHOWING OF THE
36 FEMALE BREAST BELOW A HORIZONTAL LINE ACROSS THE TOP OF THE AREOLA AND
37 EXTENDING ACROSS THE WIDTH OF THE BREAST AT THAT POINT OR THE SHOWING OF THE
38 MALE OR FEMALE BUTTOCKS. SEMINUDE OR SEMINUDITY INCLUDES THE LOWER PORTION
39 OF THE FEMALE BREAST BUT DOES NOT INCLUDE ANY PORTION OF THE CLEAVAGE OF THE
40 FEMALE BREASTS EXHIBITED BY A BIKINI, DRESS, BLOUSE, SHIRT, LEOTARD OR
41 SIMILAR WEARING APPAREL IF THE AREOLA IS NOT EXPOSED IN WHOLE OR IN PART.

42 ~~17.~~ 19. "Specific anatomical areas" means any of the following:

43 (a) A human anus, genitals, the pubic region or a female breast below
44 a point immediately above the top of the areola that is less than completely
45 and opaquely covered.

1 (b) Male genitals in a discernibly turgid state even if completely and
2 opaquely covered.

3 ~~18-~~ 20. "Specific sexual activities" means any of the following:

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

5 (b) Sex acts, normal or perverted, actual or simulated, including acts
6 of human masturbation, sexual intercourse, oral copulation or sodomy.

7 (c) Fondling or other erotic touching of the human genitals, pubic
8 region, buttocks, anus or female breast.

9 (d) Excretory functions as part of or in connection with any of the
10 activities under subdivision (a), (b) or (c) of this paragraph.

11 Sec. 2. Title 13, chapter 14, Arizona Revised Statutes, is amended by
12 adding section 13-1412, to read:

13 ~~13-1412.~~ Adult oriented businesses; unlawful activities;
14 injunction; classification; definitions

15 A. IT IS UNLAWFUL FOR A PERSON WHO IS CONVICTED OF OR WHO PLEADS
16 GUILTY OR NO CONTEST TO A SPECIFIC CRIMINAL ACT TO ESTABLISH OR OPERATE AN
17 ADULT ORIENTED BUSINESS.

18 B. IT IS UNLAWFUL FOR AN EMPLOYEE TO INTENTIONALLY OR KNOWINGLY,
19 APPEAR IN A NUDE OR SEMINUDE CONDITION IN AN ADULT ORIENTED BUSINESS UNLESS
20 THE EMPLOYEE, WHILE NUDE OR SEMINUDE, IS ON A FIXED STAGE AT LEAST SIX FEET
21 FROM ALL PATRONS AND AT LEAST EIGHTEEN INCHES FROM THE FLOOR IN A ROOM OF AT
22 LEAST SIX HUNDRED SQUARE FEET.

23 C. IT IS UNLAWFUL FOR AN EMPLOYEE WHO APPEARS IN A NUDE OR SEMINUDE
24 CONDITION TO INTENTIONALLY OR KNOWINGLY TOUCH A PATRON OR A PATRON'S CLOTHING
25 IN THE ADULT ORIENTED BUSINESS.

26 D. IT IS UNLAWFUL FOR A PERSON TO INTENTIONALLY OR KNOWINGLY SELL, USE
27 OR CONSUME ALCOHOLIC BEVERAGES ON THE PREMISES OF AN ADULT ORIENTED BUSINESS.

28 E. AN ADULT ORIENTED BUSINESS THAT EXHIBITS ON THE PREMISES THROUGH
29 ANY MECHANICAL OR ELECTRONIC IMAGE PRODUCING DEVICE A FILM, VIDEOCASSETTE,
30 DIGITAL VIDEO DISC OR OTHER VIDEO REPRODUCTION THAT IS CHARACTERIZED BY AN
31 EMPHASIS ON THE DISPLAY OF SPECIFIC SEXUAL ACTIVITIES OR SPECIFIC ANATOMICAL
32 AREAS SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

33 1. THE INTERIOR OF THE PREMISES SHALL BE CONFIGURED IN A MANNER THAT
34 THERE IS AN UNOBSTRUCTED VIEW FROM AN OPERATOR'S STATION OF EVERY AREA OF THE
35 PREMISES EXCEPT RESTROOMS, INCLUDING THE INTERIOR OF EACH VIEWING ROOM IN
36 WHICH ANY PATRON IS PERMITTED ACCESS FOR ANY PURPOSE.

37 2. AN OPERATOR'S STATION SHALL NOT EXCEED THIRTY-TWO SQUARE FEET OF
38 FLOOR AREA.

39 3. IF THE PREMISES HAS TWO OR MORE DESIGNATED OPERATOR'S STATIONS, THE
40 INTERIOR OF THE PREMISES SHALL BE CONFIGURED IN A MANNER THAT THERE IS AN
41 UNOBSTRUCTED VIEW OF EACH AREA OF THE PREMISES IN WHICH ANY PATRON IS
42 PERMITTED ACCESS FOR ANY PURPOSE FROM AT LEAST ONE OF THE OPERATOR'S
43 STATIONS.

44 4. THE VIEW THAT IS REQUIRED BY THIS SUBSECTION IS BY DIRECT LINE OF
45 SIGHT FROM THE OPERATOR'S STATION.

1 5. THE OPERATOR SHALL HAVE AT LEAST ONE EMPLOYEE ON DUTY WHO IS
2 SITUATED IN AN OPERATOR'S STATION AT ALL TIMES THAT ANY PATRON IS ON THE
3 PORTION OF THE PREMISES THAT IS MONITORED BY THE OPERATOR STATION.

4 6. THE OPERATOR AND ANY EMPLOYEES PRESENT ON THE PREMISES SHALL ENSURE
5 THAT THE VIEWING AREA REQUIRED BY THIS SUBSECTION REMAINS UNOBSTRUCTED BY ANY
6 DOORS, CURTAINS, WALLS, MERCHANDISE, DISPLAY RACKS OR OTHER MATERIALS OR
7 ENCLOSURES AT ALL TIMES THAT ANY PATRON IS PRESENT ON THE PREMISES.

8 F. WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS
9 SECTION, AN ADULT ORIENTED BUSINESS THAT DOES NOT HAVE A STAGE OR INTERIOR
10 CONFIGURATION THAT MEETS AT LEAST THE MINIMUM REQUIREMENTS OF SUBSECTIONS B
11 AND E OF THIS SECTION SHALL COMPLY WITH THE STAGE AND BUILDING REQUIREMENTS
12 PRESCRIBED BY SUBSECTIONS B AND E OF THIS SECTION. DURING THE ONE HUNDRED
13 EIGHTY DAY PERIOD, ANY EMPLOYEE WHO APPEARS WITHIN VIEW OF ANY PATRON IN A
14 NUDE OR SEMINUDE CONDITION SHALL REMAIN, WHILE NUDE OR SEMINUDE, AT LEAST SIX
15 FEET FROM ALL PATRONS.

16 G. THIS SECTION DOES NOT IMPOSE STRICT LIABILITY. UNLESS A CULPABLE
17 MENTAL STATE IS OTHERWISE SPECIFIED, A KNOWING OR RECKLESS ACT IS NECESSARY
18 FOR A VIOLATION OF THIS SECTION. NOTWITHSTANDING ANY OTHER LAW, AN ACT BY AN
19 EMPLOYEE IS IMPUTED TO THE ADULT ORIENTED BUSINESS FOR THE PURPOSE OF FINDING
20 A VIOLATION OF THIS SECTION ONLY IF AN OFFICER, DIRECTOR, GENERAL PARTNER OR
21 OPERATOR OF THE BUSINESS KNOWINGLY OR RECKLESSLY ALLOWED THE ACT TO OCCUR ON
22 THE PREMISES. IT IS A DEFENSE THAT THE PERSON TO WHOM LIABILITY IS IMPUTED
23 WAS POWERLESS TO PREVENT THE ACT.

24 H. A POLITICAL SUBDIVISION OF THIS STATE IS AUTHORIZED TO MAINTAIN,
25 ENACT AND ENFORCE LOCAL ORDINANCES, RULES, REGULATIONS, RESOLUTIONS OR OTHER
26 SIMILAR LAWS CONCERNING THE REGULATION OF ADULT ORIENTED BUSINESSES OR
27 SIMILAR SEXUALLY ORIENTED BUSINESSES THAT ARE THE SAME AS OR STRICTER THAN
28 BUT NOT INCONSISTENT WITH THIS SECTION.

29 I. IF A VIOLATION OF THIS SECTION IS COMMITTED IN ANY COUNTY OR CITY,
30 THE COUNTY ATTORNEY OF THAT COUNTY SHALL, OR A CITIZEN OF THIS STATE WHO
31 RESIDES IN THAT COUNTY OR CITY IN THE CITIZEN'S OWN NAME MAY, MAINTAIN AN
32 ACTION TO ABATE AND PREVENT THE VIOLATION AND TO ENJOIN PERPETUALLY ANY
33 PERSON WHO IS COMMITTING THE VIOLATION AND THE OWNER, LESSEE OR AGENT OF THE
34 BUILDING OR PLACE IN OR ON WHICH THE VIOLATION IS OCCURRING FROM DIRECTLY OR
35 INDIRECTLY COMMITTING OR PERMITTING THE VIOLATION.

36 J. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR. EACH DAY
37 THAT A VIOLATION OCCURS CONSTITUTES A SEPARATE OFFENSE.

38 K. FOR THE PURPOSES OF THIS SECTION:

39 1. "ADULT ORIENTED BUSINESS" HAS THE SAME MEANING PRESCRIBED IN
40 SECTION 11-811.

41 2. "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS ANY SERVICE ON THE
42 PREMISES OF AN ADULT ORIENTED BUSINESS ON A FULL-TIME, PART-TIME OR CONTRACT
43 BASIS REGARDLESS OF WHETHER THE PERSON IS DENOMINATED AN EMPLOYEE,
44 INDEPENDENT CONTRACTOR, AGENT, LESSEE OR OTHERWISE. EMPLOYEE DOES NOT
45 INCLUDE A PERSON EXCLUSIVELY ON THE PREMISES FOR REPAIR OR MAINTENANCE OF THE
46 PREMISES OR FOR THE DELIVERY OF GOODS TO THE PREMISES.

- 1 3. "ESTABLISH" MEANS ANY OF THE FOLLOWING:
2 (a) THE OPENING OR COMMENCEMENT OF ANY ADULT ORIENTED BUSINESS AS A
3 NEW BUSINESS.
4 (b) THE CONVERSION OF AN EXISTING BUSINESS, WHETHER OR NOT AN ADULT
5 ORIENTED BUSINESS, TO ANY ADULT ORIENTED BUSINESS.
6 (c) THE ADDITION OF ANY ADULT ORIENTED BUSINESS TO ANY OTHER EXISTING
7 ADULT ORIENTED BUSINESS.
8 4. "NUDE" HAS THE SAME MEANING PRESCRIBED IN SECTION 11-811.
9 5. "OPERATOR" MEANS ANY PERSON ON THE PREMISES OF AN ADULT ORIENTED
10 BUSINESS WHO MANAGES, SUPERVISES OR CONTROLS THE BUSINESS OR A PORTION OF THE
11 BUSINESS AND INCLUDES A PERSON WHO IS AN OWNER, PART OWNER OR LICENSEE OF THE
12 BUSINESS.
13 6. "PERSON" MEANS AN INDIVIDUAL, PROPRIETORSHIP, PARTNERSHIP,
14 CORPORATION, ASSOCIATION OR OTHER LEGAL ENTITY.
15 7. "PREMISES" MEANS THE REAL PROPERTY THAT THE ADULT ORIENTED BUSINESS
16 IS LOCATED ON AND ALL APPURTENANCES TO IT AND BUILDINGS ON IT, INCLUDING THE
17 ADULT ORIENTED BUSINESS, GROUNDS, PRIVATE WALKWAYS AND PARKING LOTS OR
18 PARKING GARAGES OR BOTH ADJACENT TO IT, UNDER THE OWNERSHIP, CONTROL OR
19 SUPERVISION OF THE ADULT ORIENTED BUSINESS OR ITS OPERATOR.
20 8. "SEMINUDE" HAS THE SAME MEANING PRESCRIBED IN SECTION 11-811.
21 9. "SPECIFIC ANATOMICAL AREAS" HAS THE SAME MEANING PRESCRIBED IN
22 SECTION 11-811.
23 10. "SPECIFIC CRIMINAL ACT" MEANS ANY OF THE FOLLOWING OFFENSES IF LESS
24 THAN FIVE YEARS HAVE ELAPSED SINCE THE DATE OF THE CONVICTION OR THE DATE OF
25 RELEASE FROM CONFINEMENT FOR THE CONVICTION, WHICHEVER IS LATER:
26 (a) SEXUAL ASSAULT PURSUANT TO SECTION 13-1406.
27 (b) SEXUAL CONDUCT WITH A MINOR PURSUANT TO SECTION 13-1405.
28 (c) A VIOLATION OF AN OFFENSE LISTED IN CHAPTER 32 OR 35 OF THIS
29 TITLE.
30 (d) MONEY LAUNDERING PURSUANT TO SECTION 13-2317.
31 (e) TAX EVASION PURSUANT TO SECTION 42-1127, SUBSECTION B.
32 (f) AN ATTEMPT, SOLICITATION OR CONSPIRACY TO COMMIT ONE OF THE
33 OFFENSES LISTED IN THIS PARAGRAPH.
34 (g) ANY OFFENSE COMMITTED IN ANOTHER JURISDICTION THAT IF COMMITTED IN
35 THIS STATE WOULD CONSTITUTE AN OFFENSE LISTED IN THIS PARAGRAPH.
36 11. "SPECIFIC SEXUAL ACTIVITIES" HAS THE SAME MEANING PRESCRIBED IN
37 SECTION 11-811.
38 12. "VIEWING ROOM" MEANS THE ROOM, BOOTH OR AREA WHERE A PATRON OF AN
39 ADULT ORIENTED BUSINESS WOULD ORDINARILY BE POSITIONED WHILE WATCHING A FILM,
40 VIDEOCASSETTE, DIGITAL VIDEO DISC OR OTHER VIDEO REPRODUCTION.
41 Sec. 3. Legislative purposes and findings
42 A. The legislature's purpose in regulating adult oriented businesses
43 is to promote the health, safety and general welfare of the citizens of
44 Arizona and to establish reasonable and uniform regulations to prevent the
45 deleterious secondary effects of adult oriented businesses within this State.
46 The regulations have neither the purpose nor effect of imposing a limitation

1 or restriction on the content or reasonable access to any communicative
2 materials, including sexually oriented materials. Similarly, it is neither
3 the intent nor effect of the regulations to restrict or deny access by adults
4 to sexually oriented materials protected by the first amendment to the United
5 States Constitution or article 2, section 6 of the Arizona Constitution or to
6 deny access by the distributors and exhibitors of sexually oriented
7 entertainment to their intended market. Neither is it the intent nor effect
8 of this act to condone or legitimize the distribution of obscene material.

9 B. Based on evidence of the adverse secondary effects of adult uses
10 presented in hearings and in reports made available to the legislature and on
11 findings, interpretations and narrowing constructions incorporated in the
12 cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004);
13 *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie*
14 *v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres,*
15 *Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50
16 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v.*
17 *LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S.
18 714 (1981); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Center for*
19 *Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *State*
20 *v. Stummer*, 219 Ariz. 137 (2008); *Treulich's Plaza, LLC v. City of Phoenix*,
21 No. 1 CA-CV-09-25, 2009 WL 4981478 (Ariz. Ct. App. Dec. 22, 2009);
22 *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007);
23 *Fantasyland Video, Inc. v. County of San Diego*, 373 F. Supp. 2d 1094 (S.D.
24 Cal. 2005); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d
25 1186 (9th Cir. 2004); *Talk of the Town v. City of Las Vegas*, 343 F.3d 1063
26 (9th Cir. 2003); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986);
27 *Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way*, No. 01-35533, 46 F.
28 App'x 409 (9th Cir. Aug. 20, 2002); *Colacurcio v. City of Kent*, 163 F.3d 545
29 (9th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th
30 Cir. 1996); *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir.
31 1982); *IDK, Inc. v. County of Clark*, 836 F.2d 1185 (9th Cir. 1988); *Baby Tam*
32 *& Co. v. City of Las Vegas*, 199 F.3d 1111 (9th Cir. 2000) (*Baby Tam II*); *Baby*
33 *Tam & Co. v. City of Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) (*Baby Tam III*);
34 *Dream Palace v. Maricopa County*, 384 F.3d 990 (9th Cir. 2004);
35 *Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211 (9th Cir. 1984);
36 *Ocello v. Koster*, - S.W.3d -, 2011 WL 5547027 (Mo. Nov. 15, 2011); *84*
37 *Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011);
38 *Ino Ino, Inc. v. City of Bellevue*, 937 P.2d 154 (Wash. 1997); *Tily B., Inc.*
39 *v. City of Newport Beach*, 81 Cal. Rptr. 2d 6 (Cal. Ct. App. 1998); *7250 Corp.*
40 *v. Board of County Comm'rs*, 799 P.2d 917 (Colo. 1990); *City of Chicago v.*
41 *Pooh Bah Enters., Inc.*, 865 N.E.2d 133 (Ill. 2006); *Pooh-Bah Enters., Inc. v.*
42 *County of Cook*, 905 N.E.2d 781 (Ill. 2009); *Imaginary Images, Inc. v. Evans*,
43 612 F.3d 736 (4th Cir. 2010); *Andy's Restaurant & Lounge, Inc. v. City of*
44 *Gary*, 466 F.3d 550 (7th Cir. 2006); *LLEH, Inc. v. Wichita County*, 289 F.3d
45 358 (5th Cir. 2002); *Plaza Group Properties, LLC v. Spencer County Plan*
46 *Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v.*

1 *Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v.*
 2 *Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby*
 3 *County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand*
 4 *Rapids*, 526 F.3d 291 (6th Cir. 2008); *Deja Vu of Cincinnati, L.L.C. v. Union*
 5 *Twp. Bd. of Trs.*, 411 F.3d 777 (6th Cir. 2005); *Ben's Bar, Inc. v. Village of*
 6 *Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*,
 7 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*,
 8 490 F.3d 860 (11th Cir. 2007); *Schultz v. City of Cumberland*, 228 F.3d 831
 9 (7th Cir. 2000); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007);
 10 *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d
 11 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336
 12 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248
 13 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546
 14 (5th Cir. 2006); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631
 15 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th
 16 Cir. 2009); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998);
 17 *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*,
 18 No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Gammoh v. City*
 19 *of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of*
 20 *Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order
 21 (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*,
 22 Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial
 23 Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City*
 24 *of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law
 25 (N.D. Tex. May 26, 2005); and based on reports concerning secondary effects
 26 occurring in and around adult oriented businesses, including, but not limited
 27 to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove,
 28 California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979,
 29 1995-98; Tucson, Arizona - 1990; Chattanooga, Tennessee - 1999-2003;
 30 Los Angeles, California - 1977; Whittier, California - 1978; Spokane,
 31 Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004;
 32 Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth,
 33 Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003;
 34 Amarillo, Texas - 1977; Jackson County, Missouri - 2008; Louisville,
 35 Kentucky - 2004; New York, New York Times Square - 1994; the Report of the
 36 Attorney General's Working Group On The Regulation Of Sexually Oriented
 37 Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; "Rural
 38 Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review
 39 153 (2008); "Alcohol's Direct and Indirect Effects on Men's Self-Reported
 40 Sexual Aggression Likelihood," 63 J. Stud. Alcohol 688 (2002); "Perceptions
 41 of Postdrinking Female Sexuality: Effects of Gender, Beverage Choice, and
 42 Drink Payment," 1988 J. Applied Soc. Psych. 1295; "The Effects of Alcohol and
 43 Anger on Interest in Violence, Erotica, and Deviance," 95 J. Abnormal Psych.
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1 Holsopple, Program Director, Freedom and Justice Center for Prostitution
2 Resources, Minneapolis, Minnesota; "Adult entertainment establishments: An
3 Insider's View," by David Sherman, presented to the Michigan House Committee
4 on Ethics and Constitutional Law, Jan. 12, 2000; Memphis, Tennessee -
5 2005-2011; Fulton County, Georgia - 2001; Manatee County, Florida - 2002-
6 2007; Hillsborough County, Florida - 2006; and Articles re: Violence at
7 Arizona Adult Businesses, the legislature finds that:

8 1. Adult oriented businesses, as a category of commercial land uses,
9 are associated with a wide variety of adverse secondary effects, including
10 personal and property crimes, prostitution, potential spread of disease,
11 public indecency, obscenity, illicit drug use and trafficking, negative
12 impacts on surrounding properties, urban blight and sexual assault and
13 exploitation. Alcohol consumption impairs judgment and lowers inhibitions,
14 thereby increasing the risk of adverse secondary effects.

15 2. Adult oriented businesses should be separated from sensitive land
16 uses to minimize the impact of their secondary effects on such uses.

17 3. Each of the foregoing negative secondary effects constitutes a harm
18 which the state has a substantial government interest in preventing and
19 abating. This substantial government interest in preventing secondary
20 effects, which is the legislature's rationale for the regulations, exists
21 independent of any comparative analysis between adult or sexually oriented
22 and nonsexually oriented businesses. Additionally, this state's interest in
23 regulating adult oriented businesses extends to preventing future secondary
24 effects of either current or future adult oriented businesses that may locate
25 in this state. The legislature finds that the cases and documentation relied
26 on in this legislation are reasonably believed to be relevant to said
27 secondary effects.

28 Sec. 4. Severability

29 If a provision of this act or its application to any person or
30 circumstance is held invalid, the invalidity does not affect other provisions
31 or applications of the act that can be given effect without the invalid
32 provision or application, and to this end the provisions of the act are
33 severable.

34 Sec. 5. Emergency

35 This act is an emergency measure that is necessary to preserve the
36 public peace, health or safety and is operative immediately as provided by
37 law.