

Senate Engrossed

~~drag performers; drag shows; regulation~~
(now: sexually explicit performances; regulation)

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1030

AN ACT

AMENDING SECTIONS 11-811 AND 13-1425, ARIZONA REVISED STATUTES; 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~~ SHALL
6 adopt a zoning ordinance in order to conserve and promote the public
7 health, safety, convenience and general welfare. The zoning ordinance and
8 all rezonings and zoning regulations amendments adopted under this article
9 shall be consistent with and conform to the adopted comprehensive plan.
10 In addition to the other matters that are required or authorized under
11 this section and article 1 of 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
15 for adequate light, air and parking facilities and for expediting traffic
16 within the districts.

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

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

1 property of the dairy is subject to this paragraph unless the operation
2 begins within one-quarter mile of the dairy.

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

13 C. In accordance with article II, sections 1 and 2, Constitution of
14 Arizona, the board shall consider the individual property rights and
15 personal liberties of the residents of the county before adopting any
16 zoning ordinance.

17 D. This section does not authorize:

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

20 2. The regulation or restriction of the use or occupation of land
21 or improvements for railroad, mining, metallurgical, grazing or general
22 agricultural purposes, if the tract concerned is five or more contiguous
23 commercial acres. For the purposes of this paragraph, general
24 agricultural purposes do not include the cultivation of cannabis as
25 defined in section 13-3401 or marijuana as defined in section 13-3401 or
26 36-2801.

27 E. For the purposes of this section:

28 1. "Adult arcade" means any place to which the public is ~~permitted~~
29 ~~ALLOWED~~ or invited and in which coin-operated or slug-operated or
30 electronically, electrically or mechanically controlled still or motion
31 picture machines, projectors or other ~~image-producing~~ ~~IMAGE-PRODUCING~~
32 devices are maintained to show images involving specific sexual activities
33 or specific anatomical areas to persons in booths or viewing rooms.

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

37 (a) Books, magazines, periodicals or other printed matter,
38 photographs, films, motion pictures, videocassettes or reproductions or
39 slides or other visual representations that depict or describe specific
40 sexual activities or specific anatomical areas.

41 (b) Instruments, devices or paraphernalia that are designed for use
42 in connection with specific sexual activities.

43 3. "Adult live entertainment establishment" means an establishment
44 that features either:

45 (a) Persons who appear in a state of nudity.

1 (b) Live performances that are characterized by the exposure of
2 specific anatomical areas or specific sexual activities.

3 4. "Adult motion picture theater" means a commercial establishment
4 in which for any form of consideration films, motion pictures,
5 videocassettes, slides or other similar photographic reproductions that
6 are characterized by the depiction or description of specific sexual
7 activities or specific anatomical areas are predominantly shown.

8 5. "Adult oriented business" means adult arcades, adult bookstores
9 or video stores, cabarets, adult live entertainment establishments, adult
10 motion picture theaters, adult theaters, massage establishments that offer
11 adult service, ESTABLISHMENTS THAT CONDUCT SEXUALLY EXPLICIT PERFORMANCES
12 or nude model studios.

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

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

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

23 9. "Adult theater" means a theater, concert hall, auditorium or
24 similar commercial establishment that predominantly features persons who
25 appear in a state of nudity or who engage in live performances that are
26 characterized by the exposure of specific anatomical areas or specific
27 sexual activities.

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

30 11. "Discernibly turgid state" means the state of being visibly
31 swollen, bloated, inflated or distended.

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

39 (a) Persons who are licensed pursuant to title 32, chapter 7, 8,
40 13, 14 or 17.

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

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

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

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

5 13. "Nude model studio":

6 (a) Means a place in which a person who appears in a state of
7 nudity or who displays specific anatomical areas is observed, sketched,
8 drawn, painted, sculptured, photographed or otherwise depicted by other
9 persons who pay money or other consideration. ~~Nude model studio~~

10 (b) Does not include a proprietary school that is licensed by this
11 state, a college, community college or university that is supported
12 entirely or in part by taxation, a private college or university that
13 maintains and operates educational programs in which credits are
14 transferable to a college, community college or university that is
15 supported entirely or in part by taxation or a structure to which the
16 following apply:

17 ~~(a)~~ (i) A sign is not visible from the exterior of the structure
18 and no other advertising appears indicating that a nude person is
19 available for viewing.

20 ~~(b)~~ (ii) A student must enroll at least three days in advance of a
21 class in order to participate.

22 ~~(c)~~ (iii) No more than one nude or seminude model is on the
23 premises at any time.

24 14. "Nude", "nudity" or "state of nudity" means any of the
25 following:

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

28 (b) A state of dress that fails to opaquely cover a human anus,
29 genitals or a female breast below a point immediately above the top of the
30 areola.

31 15. "Principal business purposes" means that a commercial
32 establishment derives fifty percent or more of its gross income from the
33 sale or rental of items listed in paragraph 2 of this subsection.

34 16. "Seminude" means a state of dress in which clothing covers no
35 more than the genitals, pubic region and female breast below a point
36 immediately above the top of the areola, as well as portions of the body
37 that are covered by supporting straps or devices.

38 17. "SEXUALLY EXPLICIT" MEANS:

39 (a) AN INTENTION TO AROUSE OR SATISFY THE SEXUAL DESIRES OR APPEAL
40 TO THE PRURIENT INTEREST.

41 (b) DEPICTIONS, SIMULATIONS OR ACTS OF MASTURBATION, SEXUAL
42 INTERCOURSE OR PHYSICAL CONTACT WITH A PERSON'S CLOTHED OR UNCLOTHED
43 GENITALS, PUBIC AREA, BUTTOCKS OR BREAST.

1 (c) SEXUAL EXCITEMENT. FOR THE PURPOSES OF THIS PARAGRAPH, "SEXUAL
2 EXCITEMENT" MEANS THE CONDITION OF THE HUMAN MALE OR FEMALE GENITALS WHEN
3 IN A STATE OF SEXUAL STIMULATION OR AROUSAL.

4 (d) ULTIMATE SEXUAL ACTS. FOR THE PURPOSES OF THIS PARAGRAPH
5 "ULTIMATE SEXUAL ACTS" MEANS ACTUAL OR SIMULATED SEXUAL INTERCOURSE,
6 VAGINAL OR ANAL FELLATIO, CUNNILINGUS, BESTIALITY OR SODOMY. A SEXUAL ACT
7 IS SIMULATED WHEN IT DEPICTS EXPLICIT SEXUAL ACTIVITY THAT GIVES THE
8 APPEARANCE OF CONSUMMATION OF ULTIMATE SEXUAL ACTS.

9 18. "SEXUALLY EXPLICIT PERFORMANCE" MEANS A SHOW OR PERFORMANCE FOR
10 ENTERTAINMENT AT WHICH A SINGLE PERFORMER OR GROUP OF PERFORMERS
11 ENTERTAINS AN AUDIENCE OF TWO OR MORE PEOPLE IN A MANNER THAT IS SEXUALLY
12 EXPLICIT.

13 ~~17.~~ 19. "Specific anatomical areas" means any of the following:

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

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

19 ~~18.~~ 20. "Specific sexual activities" means any of the following:

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

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

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

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

27 Sec. 2. Section 13-1425, Arizona Revised Statutes, is amended to
28 read:

29 13-1425. Unlawful disclosure of images depicting states of
30 nudity or specific sexual activities;
31 classification; definitions

32 A. It is unlawful for a person to intentionally disclose an image
33 of another person who is identifiable from the image itself or from
34 information displayed in connection with the image if all of the following
35 apply:

36 1. The person in the image is depicted in a state of nudity or is
37 engaged in specific sexual activities.

38 2. The depicted person has a reasonable expectation of privacy.
39 Evidence that a person has sent an image to another person using an
40 electronic device does not, on its own, remove the person's reasonable
41 expectation of privacy for that image.

42 3. The image is disclosed with the intent to harm, harass,
43 intimidate, threaten or coerce the depicted person.

44 B. This section does not apply to any of the following:

45 1. The reporting of unlawful conduct.

- 1 2. Lawful and common practices of law enforcement, criminal
2 reporting, legal proceedings or medical treatment.
- 3 3. Images involving voluntary exposure in a public or commercial
4 setting.
- 5 4. An interactive computer service, as defined in 47 United States
6 Code section 230(f)(2), or an information service, as defined in 47 United
7 States Code section 153, with regard to content wholly provided by another
8 party.
- 9 5. Any disclosure that is made with the consent of the person who
10 is depicted in the image.
- 11 C. A violation of this section is a class 5 felony, except that a
12 violation of this section is a:
- 13 1. Class 4 felony if the image is disclosed by electronic means.
- 14 2. Class 1 misdemeanor if a person threatens to disclose but does
15 not disclose an image that if disclosed would be a violation of this
16 section.
- 17 D. For the purposes of this section:
- 18 1. "Disclose" means display, distribute, publish, advertise or
19 offer.
- 20 2. "Disclosed by electronic means" means delivery to an email
21 address, mobile device, tablet or other electronic device and includes
22 disclosure on a website.
- 23 3. "Harm" means physical injury, financial injury or serious
24 emotional distress.
- 25 4. "Image" means a photograph, videotape, film or digital
26 recording.
- 27 5. "Reasonable expectation of privacy" means the person exhibits an
28 actual expectation of privacy and the expectation is reasonable.
- 29 6. "Specific sexual activities" has the same meaning prescribed in
30 section 11-811, subsection E, paragraph ~~18~~ 20, subdivisions (a) and (b).
- 31 7. "State of nudity" has the same meaning prescribed in section
32 11-811, subsection E, paragraph 14, subdivision (a).