

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

835V0514

## HOUSE BILL NO. 1196

Introduced by: Representative Steele

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to adult oriented  
2 businesses.

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

4 Section 1. That § 11-12-1 be amended to read as follows:

5 11-12-1. Terms used in this chapter mean:

6 (1) "Adult arcade," any place to which the public is permitted or invited and in which  
7 coin-operated or slug-operated or electronically, electrically, or mechanically  
8 controlled still or motion picture machines, projectors, or other image producing  
9 devices are regularly maintained to show images ~~involving~~ to five or fewer persons  
10 per machine at any one time, and where the images so displayed are characterized by  
11 their emphasis upon matter exhibiting specific sexual activities or specific anatomical  
12 areas ~~to persons in booths or viewing rooms;~~

13 (2) "Adult bookstore or video store," a commercial establishment that offers for sale or  
14 rent any of the following as one of its principal business purposes:

15 (a) Books, magazines, periodicals, or other printed matter, photographs, films,



- 1 motion pictures, videocassettes or reproductions or slides, or other visual  
2 representations that ~~depict or describe~~ are characterized by an emphasis on the  
3 depiction or display of specific sexual activities or specific anatomical areas;
- 4 (b) Instruments, devices, or paraphernalia ~~that are designed, marketed, packaged,~~  
5 promoted, displayed, or advertised by the commercial establishment as items  
6 for use in connection with specific sexual activities;
- 7 (3) "Adult cabaret," any nightclub, bar, restaurant, or other similar commercial  
8 establishment that regularly features:
- 9 (a) Persons who appear in a state of nudity or seminudity;
- 10 (b) Live performances that are characterized by an emphasis on the exposure of  
11 specific anatomical areas or specific sexual activities;
- 12 (c) Films, motion pictures, videocassettes, slides or other photographic  
13 reproductions that are characterized by an emphasis on the depiction or  
14 ~~description~~ display of specific sexual activities or specific anatomical areas;
- 15 (4) "Adult live entertainment establishment," an establishment that features:
- 16 (a) Any person who appears in a state of nudity or seminudity;
- 17 (b) Live performances that are characterized by an emphasis on the exposure of  
18 specific anatomical areas or specific sexual activities;
- 19 (5) "Adult motion picture theater," a commercial establishment in which, for any form  
20 of consideration, films, motion pictures, videocassettes, slides, or other similar  
21 photographic reproductions that are characterized by the depiction or ~~description~~  
22 display of specific sexual activities or specific anatomical areas are predominantly  
23 shown;
- 24 ~~(5)~~(6) "Adult oriented business," any adult arcade, adult bookstore or video store, cabaret,

1 adult live entertainment establishment, adult motion picture theater, adult theater,  
2 massage establishment that offers adult service, or nude model studios;

3 ~~(6)~~(7) "Adult service," dancing, serving food or beverages, modeling, posing, wrestling,  
4 singing, reading, talking, listening, or other performances or activities conducted for  
5 any consideration in an adult oriented business by a person who is nude or seminude  
6 during all or part of the time that the person is providing the service;

7 ~~(7)~~(8) "Adult theater," a theater, concert hall, auditorium, or similar commercial  
8 establishment that predominantly features persons who appear in a state of nudity or  
9 who engage in live performances that are characterized by an emphasis on the  
10 exposure of specific anatomical areas or specific sexual activities;

11 (9) "Discernibly turgid state," the state of being visibly swollen, bloated, inflated, or  
12 distended;

13 ~~(8)~~(10) "Massage establishment," an establishment in which a person, firm,  
14 association, or corporation engages in or permits massage activities, including  
15 any method of pressure on, friction against, stroking, kneading, rubbing,  
16 tapping, pounding, vibrating, or stimulating of external soft parts of the body  
17 with the hands or with the aid of any mechanical apparatus or electrical  
18 apparatus or appliance. This subdivision does not apply to:

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

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

23 (c) Physician assistants who are licensed pursuant to chapter 36-4A or certified  
24 nurse practitioners and certified nurse midwives who are licensed pursuant to

1 chapter 36-9A;

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

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

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

5 (g) Chiropractors licensed pursuant to chapter 36-5;

6 ~~(9)~~(11) "Nude model studio," a place in which a person who appears in a state of  
7 nudity or who displays specific anatomical areas is observed, sketched, drawn,  
8 painted, sculptured, photographed, or otherwise depicted by other persons who  
9 pay money or other consideration. The term, nude model studio, does not  
10 include a proprietary school that is licensed by this state, a college, or a  
11 university that is supported entirely or in part by taxation, a private college or  
12 university that maintains and operates educational programs in which credits  
13 are transferable to a college or university that is supported entirely or in part  
14 by taxation or a structure to which the following 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 ~~(10)~~(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       ~~(11)~~(13)       "Place of worship," a structure where persons regularly assemble for worship,  
2                               ceremonies, rituals, and education relating to a particular form of religious  
3                               belief and which a reasonable person would conclude is a place of worship by  
4                               reason of design, signs, or architectural or other features;

5       (14)       "A principal business purpose," exists when a commercial establishment meets any  
6                               one or more of the following criteria:

7               (a)       At least thirty-five percent of the establishment's displayed merchandise  
8                               consists of said items;

9               (b)       At least thirty-five percent of the wholesale value of the establishment's  
10                              displayed merchandise consists of said items;

11              (c)       At least thirty-five percent of the retail value (defined as the price charged to  
12                              customers) of the establishment's displayed merchandise consists of said  
13                              items;

14              (d)       At least thirty-five percent of the establishment's revenues derive from the sale  
15                              or rental, or any form of consideration, of said items;

16              (e)       The establishment maintains at least thirty-five percent of its floor space for  
17                              the display, sale, and rental of said items (aisles and walkways used to access  
18                              said items shall be included in floor space maintained for the display, sale, and  
19                              rental of said items);

20              (f)       The establishment maintains at least five hundred square feet of its floor space  
21                              for the display, sale, and rental of said items (aisles and walkways used to  
22                              access said items shall be included in floor space maintained for the display,  
23                              sale, and rental of said items);

24              (g)       The establishment regularly offers for sale or rental at least two thousand of

1 said items;

2 (h) The establishment regularly features said items and regularly advertises itself  
3 or holds itself out, by using the terms adult, adult-only, XXX, sex, erotic,  
4 novelties, or substantially similar language, as an establishment that caters to  
5 adult sexual interests; or

6 (i) The establishment maintains an adult arcade.

7 ~~(12)~~(15) "Residence," a permanent dwelling place;

8 ~~(13)~~(16) "Seminude," a state of dress in which clothing covers no more than the  
9 genitals, pubic region, and female breast below a point immediately above the  
10 top of the areola, as well as portions of the body that are covered by supporting  
11 straps or devices;

12 ~~(14)~~(17) "Specific anatomical areas," any of the following:

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

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

18 ~~(15)~~(18) "Specific sexual activities," any of the following:

19 (a) Human genitals in a state of sexual stimulation or arousal;

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

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

24 (d) Excretory functions as part of or in connection with any of the activities under

1 subsection (a), (b), or (c) of this subdivision.

2 Section 2. That § 11-12-4 be amended to read as follows:

3 11-12-4. ~~Section~~ The provisions of § 11-12-2 does do not prohibit any county or  
4 municipality from enacting and enforcing any ordinance that regulates or declines to regulate  
5 the location of an adult oriented business. In the event that any ordinance conflicts with any  
6 provision in this chapter, the ordinance made under authority of the county or municipality shall  
7 govern.

8 Section 3. That § 11-12-5 be amended to read as follows:

9 11-12-5. ~~Section~~ The provisions of § 11-12-3 does do not prohibit any county or  
10 municipality from enacting and enforcing any ordinance that regulates or declines to regulate  
11 an adult arcade, adult bookstore or video store, adult cabaret, adult motion picture theater, adult  
12 theater, or nude model studio. In the event that any ordinance conflicts with any provision in this  
13 chapter, the ordinance made under authority of the county or municipality shall govern.