



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3983

by Rep. Margo McDermed

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1097.5
55 ILCS 5/5-1097.7
65 ILCS 5/11-5-1.5

Amends the Counties Code. Provides for a public policy recital concerning the reasons for regulating adult entertainment facilities. Provides that provisions requiring a one-mile separation between an adult entertainment facility and other specific land uses shall not be enforced if enforcement would fail to allow adult entertainment facilities reasonable alternative avenues of communications. Modifies the definition of "adult entertainment facility." Adds severability clauses. Limits home rule powers. Makes similar changes to the Illinois Municipal Code and provides that adult entertainment facility ordinances may be enforced in the circuit court by the State's Attorney, Attorney General, and persons authorized to bring an action to enjoin zoning violations. Effective immediately.

LRB099 11142 AWJ 31611 b

HOME RULE NOTE
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing
5 Sections 5-1097.5 and 5-1097.7 as follows:

6 (55 ILCS 5/5-1097.5)

7 Sec. 5-1097.5. Adult entertainment facility.

8 (a) It is the intent of the General Assembly through this
9 Section to control the negative secondary effects associated
10 with the operation of adult entertainment facilities,
11 including, but not limited to, negative impacts on surrounding
12 properties, personal and property crimes, and vice activities,
13 and to restrict the proximity of adult entertainment facilities
14 near places where children and families are actively present,
15 so as to promote the health, safety, and welfare of the
16 citizens of Illinois.

17 This Section is not intended to deny access by adults to
18 any expression that may be protected by the First Amendment of
19 the United States Constitution or by the Illinois Constitution.

20 (b) It is prohibited within an unincorporated area of a
21 county to locate an adult entertainment facility within 3,000
22 feet of the property boundaries of any school, day care center,
23 cemetery, public park, ~~forest preserve,~~ public housing, place

1 of religious worship, or residence, except that in a county
2 with a population of more than 800,000 and less than 2,000,000
3 inhabitants, it is prohibited to locate, construct, or operate
4 a new adult entertainment facility within one mile of the
5 property boundaries of any school, day care center, cemetery,
6 public park, forest preserve, public housing, or place of
7 religious worship located anywhere within that county.
8 Notwithstanding any other requirements of this Section, it is
9 also prohibited to locate, construct, or operate a new adult
10 entertainment facility within one mile of the property
11 boundaries of any school, day care center, cemetery, public
12 park, forest preserve, public housing, or place of religious
13 worship located in that area of Cook County outside of the City
14 of Chicago. The provisions requiring a one-mile separation
15 shall not be enforced if enforcement would fail to allow adult
16 entertainment facilities reasonable alternative avenues of
17 communication.

18 (c) For the purposes of this Section, "adult entertainment
19 facility" means (i) a movie theater, lounge, nightclub, bar,
20 juice bar, or similar commercial establishment that regularly
21 features a striptease club or pornographic movie theatre whose
22 business is the commercial sale, dissemination, or
23 distribution of sexually explicit material, shows, or other
24 exhibitions characterized by an emphasis on the display of
25 specified anatomical areas or specified sexual activities, or
26 (ii) a an adult bookstore or adult video store whose primary

1 business is the commercial sale, dissemination, or
2 distribution of ~~sexually explicit~~ material, shows, or other
3 exhibitions characterized by an emphasis on the display of
4 specified anatomical areas, specified sexual activities, or
5 devices, other than devices designed to prevent pregnancy or
6 sexually transmitted diseases, that are designed for use during
7 specified sexual activities. "Unincorporated area of a county"
8 means any area not within the boundaries of a municipality and
9 "specified anatomical areas" and "specified sexual activities"
10 shall have the meanings given to those terms in Section
11 5-1097.7 of this Code.

12 (d) The State's Attorney of the county where the adult
13 entertainment facility is located or the Attorney General may
14 institute a civil action for an injunction to restrain
15 violations of this Section. Those persons and entities
16 authorized to bring an action to enjoin a zoning violation may
17 bring an action to enjoin a violation of this Section. In any
18 enforcement ~~that~~ proceeding, the court shall determine whether
19 a violation has been committed and shall enter such orders as
20 it considers necessary to remove the effect of any violation
21 and to prevent the violation from continuing or from being
22 renewed in the future.

23 (e) A home rule unit may not enact an ordinance, rule, or
24 otherwise allow an adult entertainment facility to operate in a
25 manner inconsistent with this Section, except that a home rule
26 unit may lessen the required distance between an adult

1 entertainment facility and any other land use listed in
2 subsection (b) of this Section to not less than 250 feet. This
3 Section is a limitation under subsection (g) of Section 6 of
4 Article VII of the Illinois Constitution on the concurrent
5 exercise by home rule units of powers and functions exercised
6 by the State.

7 (f) The provisions of this Section are severable under
8 Section 1.31 of the Statute on Statutes.

9 (Source: P.A. 94-496, eff. 1-1-06; 95-214, eff. 8-16-07.)

10 (55 ILCS 5/5-1097.7)

11 Sec. 5-1097.7. Local ordinances to regulate adult
12 entertainment facilities and obscenity.

13 (a) Definitions. In this Act:

14 "Specified anatomical area" means human genitals or pubic
15 region, buttocks, anus, or the female breast below a point
16 immediately above the top the areola that is less than
17 completely or opaquely covered, or human male genitals in a
18 discernibly turgid state even if completely or opaquely
19 covered.

20 "Specified sexual activities" means (i) human genitals in a
21 state of sexual stimulation or excitement; (ii) acts of human
22 masturbation, sexual intercourse, fellatio, or sodomy; (iii)
23 fondling, kissing, or erotic touching of specified anatomical
24 areas; (iv) flagellation or torture in the context of a sexual
25 relationship; (v) masochism, erotic or sexually oriented

1 torture, beating, or the infliction of pain; (vi) erotic
2 touching, fondling, or other such contact with an animal by a
3 human being; or (vii) human excretion, urination,
4 menstruation, or vaginal or anal irrigation as part of or in
5 connection with any of the activities set forth in items (i)
6 through (vi).

7 (b) Ordinance to regulate adult entertainment facilities.
8 A county may adopt by ordinance reasonable regulations
9 concerning the operation of any business: (i) defined as an
10 adult entertainment facility in Section 5-1097.5 of this Act or
11 (ii) that offers or provides activities by employees, agents,
12 or contractors of the business that involve exposure of
13 specified anatomical areas or performance of specified sexual
14 activities in view of any patron, client, or customer of the
15 business. A county ordinance may also prohibit the sale,
16 dissemination, display, exhibition, or distribution of obscene
17 materials or conduct.

18 (c) A county adopting an ordinance to regulate adult
19 entertainment facilities may authorize the State's Attorney to
20 institute a civil action to restrain violations of that
21 ordinance. In that proceeding, the court shall enter such
22 orders as it considers necessary to abate the violation and to
23 prevent the violation from continuing or from being renewed in
24 the future. In addition to any injunctive relief granted by the
25 court, an ordinance may further authorize the court to assess
26 fines of up to \$1,000 per day for each violation of the

1 ordinance, with each day in violation constituting a new and
2 separate offense.

3 (d) A home rule unit may not enact an ordinance, rule, or
4 otherwise allow an adult entertainment facility to operate in a
5 manner inconsistent with this Section or subsection (e) of
6 Section 5-1097.5 of this Code. This Section is a limitation
7 under subsection (g) of Section 6 of Article VII of the
8 Illinois Constitution on the concurrent exercise by home rule
9 units of powers and functions exercised by the State.

10 (e) The provisions of this Section are severable under
11 Section 1.31 of the Statute on Statutes.

12 (Source: P.A. 94-496, eff. 1-1-06.)

13 Section 10. The Illinois Municipal Code is amended by
14 changing Section 11-5-1.5 as follows:

15 (65 ILCS 5/11-5-1.5)

16 Sec. 11-5-1.5. Adult entertainment facility.

17 (a) It is the intent of the General Assembly through this
18 Section to control the negative secondary effects associated
19 with the operation of adult entertainment facilities,
20 including, but not limited to, negative impacts on surrounding
21 properties, personal and property crimes, and vice activities,
22 and to restrict the proximity of adult entertainment facilities
23 near places where children and families are actively present,
24 so as to promote the health, safety, and welfare of the

1 citizens of Illinois.

2 This Section is not intended to deny access by adults to
3 any expression that may be protected by the First Amendment of
4 the United States Constitution or by the Illinois Constitution.

5 (b) It is prohibited within a municipality to locate an
6 adult entertainment facility within 1,000 feet of the property
7 boundaries of any school, day care center, cemetery, public
8 park, forest preserve, public housing, and place of religious
9 worship, except that in a county with a population of more than
10 800,000 and less than 2,000,000 inhabitants, it is prohibited
11 to locate, construct, or operate a new adult entertainment
12 facility within one mile of the property boundaries of any
13 school, day care center, cemetery, public park, ~~forest~~
14 ~~preserve~~, public housing, or place of religious worship located
15 anywhere within that county. Notwithstanding any other
16 requirements of this Section, it is also prohibited to locate,
17 construct, or operate a new adult entertainment facility within
18 one mile of the property boundaries of any school, day care
19 center, cemetery, public park, forest preserve, public
20 housing, or place of religious worship located in that area of
21 Cook County outside of the City of Chicago. These provisions
22 requiring a one-mile separation shall not be enforced if
23 enforcement would fail to allow adult entertainment facilities
24 reasonable alternative avenues of communication.

25 (c) For the purposes of this Section, "adult entertainment
26 facility" means (i) a movie theater, lounge, nightclub, bar,

1 juice bar, or similar commercial establishment that regularly
2 features a striptease club or pornographic movie theatre whose
3 business is the commercial sale, dissemination, or
4 distribution of sexually explicit material, shows, or other
5 exhibitions characterized by an emphasis on the display of
6 specified anatomical areas or specified sexual activities, or
7 (ii) a store whose primary business is the commercial sale,
8 dissemination, or distribution of materials, shows or other
9 exhibitions characterized by an emphasis on the display of
10 specified anatomical areas or specified sexual activities, or
11 devices, other than devices designed to prevent pregnancy or
12 sexually transmitted diseases, that are designed for use during
13 specified sexual activities. As used in this subsection (c),
14 "specified anatomical areas" and "specified sexual activities"
15 shall have the meanings given to those terms in Section
16 5-1097.7 of the Counties Code an adult bookstore or adult video
17 store in which 25% or more of its stock in trade, books,
18 magazines, and films for sale, exhibition, or viewing
19 on premises are sexually explicit material.

20 (d) The State's Attorney of the county where the adult
21 entertainment facility is located or the Attorney General may
22 institute a civil action for an injunction to restrain
23 violations of this Section. Those persons and entities
24 authorized to bring an action under Section 11-13-15 of this
25 Code to enjoin a zoning violation may bring an action to enjoin
26 a violation of this Section, and may obtain the remedies set

1 forth in Section 11-13-15 of this Code. In any enforcement
2 proceeding, the court shall determine whether a violation has
3 been committed and shall enter such orders as it considers
4 necessary to remove the effect of any violation and to prevent
5 the violation from continuing or from being renewed in the
6 future.

7 (e) A home rule unit may not enact an ordinance, rule, or
8 otherwise allow an adult entertainment facility to operate in a
9 manner inconsistent with this Section, except that a home rule
10 unit may lessen the required distance between an adult
11 entertainment facility and any other land use listed in
12 subsection (b) of this Section to not less than 250 feet. This
13 Section is a limitation under subsection (g) of Section 6 of
14 Article VII of the Illinois Constitution on the concurrent
15 exercise by home rule units of powers and functions exercised
16 by the State.

17 (f) The provisions of this Section are severable under
18 Section 1.31 of the Statute on Statutes.

19 (Source: P.A. 95-47, eff. 1-1-08; 95-214, eff. 8-16-07; 95-876,
20 eff. 8-21-08.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.