

2C:33-12.1

LEGISLATIVE HISTORY CHECKLIST
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(Sexually oriented businesses--
nuisance offense)

NJSA: 2C:33-12.1

LAWS OF: 1995 **CHAPTER:** 167

BILL NO: S342

SPONSOR(S): Gormley

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage
denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** December 1, 1994 Re-enacted 6-29-95
SENATE: March 31, 1994 Re-enacted 6-12-95

DATE OF APPROVAL: July 5, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

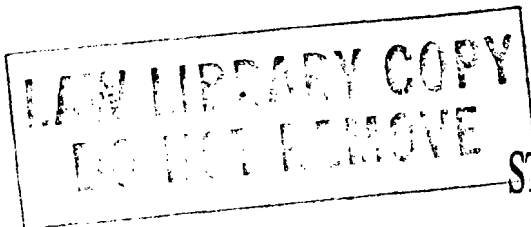
FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached:
"Whitman signs bills regulating sex shops," 7-7-95, Atlantic City Press.

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[SECOND REPRINT]

SENATE, No. 342

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senators GORMLEY, Rand, Assemblyman LoBiondo and Senator Sacco

1 AN ACT concerning sexually oriented businesses, amending
2 N.J.S.2C:33-12.1 and supplementing chapter 33 of Title 2C of
3 the New Jersey Statutes.

4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. N.J.S.2C:33-12.1 is amended to read as follows:

8 2C:33-12.1. Abating Nuisance. a. In addition to the penalty
9 imposed in case of conviction under N.J.S.2C:33-12 or under
10 section 2 of P.L. .c. (C.)(now pending before the
11 Legislature as section 2 of this bill), the court may order the
12 immediate abatement of the nuisance, and for that purpose may
13 order the seizure and forfeiture or destruction of any chattels,
14 liquors, obscene material or other personal property which may
15 be found in such building or place, and which the court is satisfied
16 from the evidence were possessed or used with a purpose of
17 maintaining the nuisance. Any such forfeiture shall be in the
18 name and to the use of the State of New Jersey, and the court
19 shall direct the forfeited property to be sold at public sale, the
20 proceeds to be paid to the treasurer of the county wherein
21 conviction was had.

22 b. If the owner of any building or place is found guilty of
23 maintaining a nuisance, the court may order that the building or
24 place where the nuisance was maintained be closed and not used
25 for a period not exceeding one year from the date of the
26 conviction.

27 (cf: P.L.1983, c.234, s.2)

28 2. (New section) a. As used in this act:

29 (1) "Sexually oriented business" means:

30 (a) A commercial establishment which as one of its principal
31 business purposes offers for sale, rental, or display any of the
32 following:

33 Books, magazines, periodicals or other printed material, or
34 photographs, films, motion pictures, video cassettes, slides or
35 other visual representations which depict or describe a "specified
36 sexual activity" or "specified anatomical area"; or still or motion
37 picture machines, projectors or other image-producing devices
38 which show images to one person per machine at any one time,
39 and where the images so displayed are characterized by the
40 depiction of a "specified sexual activity" or "specified
41 anatomical area"; or instruments, devices, or paraphernalia which
42 are designed for use in connection with a "specified sexual
43 activity"; or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted September 19, 1994.

² Senate amendments adopted in accordance with Governor's recommendations May 25, 1995.

1 (b) A commercial establishment which regularly features live
2 performances characterized by the exposure of a "specified
3 anatomical area" or by a "specified sexual activity," or which
4 regularly shows films, motion pictures, video cassettes, slides, or
5 other photographic representations which depict or describe a
6 "specified sexual activity" or "specified anatomical area";

7 (2) "Person" means an individual, proprietorship, partnership,
8 corporation, association, or other legal entity.

9 (3) "Specified anatomical area" means:

10 (a) Less than completely and opaquely covered human genitals,
11 pubic region, buttock or female breasts below a point
12 immediately above the top of the areola; or

13 (b) Human male genitals in a discernibly turgid state, even if
14 covered.

15 (4) "Specified sexual activity" means"

16 (a) The fondling or other erotic touching of covered or
17 uncovered human genitals, pubic region, buttock or female
18 breast; or

19 (b) Any actual or simulated act of human masturbation, sexual
20 intercourse or deviate sexual intercourse.

21 b. In addition to any activities proscribed by the provisions of
22 N.J.S.2C:33-12, a person is guilty of maintaining a nuisance
23 when²[:

24 (1) The] the² person owns or operates a sexually oriented
25 business which offers for public use booths, screens, enclosures or
26 other devices which facilitate sexual activity by patrons²[: or] .²

27 ²[(2) The person owns or operates a sexually oriented business
28 which is open for business ¹before 8 a.m. or¹ after 10 p.m.
29 Monday through Saturday or which is open for business on any
30 Sunday or legal holiday.]

31 c. Notwithstanding any other provision of law, a municipality
32 shall have the power to determine restrictions, if any, on the
33 hours of operation of a sexually oriented businesses.²

34 ²[c.] d.² A person who violates this act is guilty of a crime of
35 the fourth degree.

36 3. This act shall take effect 60 days following enactment.
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41 Expands offense of maintaining a nuisance to cover sexually
42 oriented businesses in certain circumstances.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

May 15, 1995

SENATE BILL NO. 342
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 342 (First Reprint) with my recommendations for reconsideration.

A. Summary of the Bill

This bill provides that any person who owns or operates a sexually oriented business, as defined in the bill, which offers for public use booths, screens, enclosures or other devices which facilitate sexual activity by its patrons, is guilty of maintaining a nuisance. The bill also provides that any person who owns a sexually oriented business which is open for business before 8 a.m. or after 10 p.m., Monday through Saturday, or which is open for business on any Sunday or legal holiday, is guilty of maintaining a nuisance.

B. Recommended Action

I fully support the intent of this legislation to help alleviate the spread of sexually transmitted diseases. However, I believe that a municipality, rather than the State, should determine what, if any, restrictions should be placed on the hours of operation of sexually oriented businesses located within its boundaries. A municipality is in the best position to promulgate ordinances which specifically address the particular needs of its community. However, a question exists as to whether municipalities are barred from restricting the hours of operation of a sexually oriented business because of the preemption provisions of N.J.S.A. 2C:1-5(d). I recommend, therefore, that this bill be amended to grant to municipalities the power to set the hours of

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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operation of sexually oriented businesses. This is consistent with the powers already possessed by municipalities in regard to businesses not under the auspices of Title 2C.

Therefore, I herewith return Senate Bill No. 342 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 2, Line 22:</u>	After "when" delete ":"
<u>Page 2, Section 2, Line 23:</u>	Delete "(1) The" and insert "the"
<u>Page 2, Section 2, Line 25:</u>	After "patrons" delete "; or" and insert "."
<u>Page 2, Section 2, Lines 26-29:</u>	Delete in entirety and insert "c. Notwithstanding any other provision of law, a municipality shall have the power to determine restrictions, if any, on the hours of operation of a sexually oriented businesses."
<u>Page 2, Section 2, Line 30:</u>	Delete "c." and insert "d."

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Margaret M. Foti

Chief Counsel to the Governor

1 (b) A commercial establishment which regularly features live
2 performances characterized by the exposure of a "specified
3 anatomical area" or by a "specified sexual activity," or which
4 regularly shows films, motion pictures, video cassettes, slides, or
5 other photographic representations which depict or describe a
6 "specified sexual activity" or "specified anatomical area";

7 (2) "Person" means an individual, proprietorship, partnership,
8 corporation, association, or other legal entity.

9 (3) "Specified anatomical area" means:

10 (a) Less than completely and opaquely covered human genitals,
11 pubic region, buttock or female breasts below a point
12 immediately above the top of the areola; or

13 (b) Human male genitals in a discernibly turgid state, even if
14 covered.

15 (4) "Specified sexual activity" means"

16 (a) The fondling or other erotic touching of covered or
17 uncovered human genitals, pubic region, buttock or female
18 breast; or

19 (b) Any actual or simulated act of human masturbation, sexual
20 intercourse or deviate sexual intercourse.

21 b. In addition to any activities proscribed by the provisions of
22 N.J.S.2C:33-12, a person is guilty of maintaining a nuisance when:

23 (1) The person owns or operates a sexually oriented business
24 which offers for public use booths, screens, enclosures or other
25 devices which facilitate sexual activity by patrons; or

26 (2) The person owns or operates a sexually oriented business
27 which is open for business after 10 p.m. Monday through Saturday
28 or which is open for business on any Sunday or legal holiday.

29 c. A person who violates this act is guilty of a crime of the
30 fourth degree.

31 3. This act shall take effect 60 days following enactment.

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34 *Speaker* STATEMENT
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36 Many adult book stores display sexually oriented movies and
37 live sex acts to patrons in private booths or similar enclosures.
38 These private booths often encourage anonymous sexual acts by
39 patrons. As this type of a conduct is conducive to the spread of
40 sexually transmitted diseases, this bill would provide that any
41 person who owns or operates a sexually oriented business which
42 offers for public use private booths or other similar enclosures is
43 guilty of maintaining a nuisance. The bill also provides that
44 operating a sexually oriented business after 10 p.m. Monday
45 through Saturday or on Sundays or legal holidays constitutes
46 maintenance of a nuisance.

47 Violations of the bill's provisions would be punishable as
48 crimes of the fourth degree. In addition to any penalty imposed,
49 the bill would permit the sentencing court to order the abatement
50 of the nuisance and the forfeiture or destruction of any property
51 used to maintain the nuisance.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

SENATE, No. 342

with committee amendments

STATE OF NEW JERSEY

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DATED: SEPTEMBER 19, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 342.

Many adult book stores display sexually oriented movies and live sex acts to patrons in private booths or similar enclosures. These private booths often encourage anonymous sexual acts by patrons. As this type of conduct is conducive to the spread of sexually transmitted diseases, this bill would provide that any person who owns or operates a sexually oriented business which offers for public use private booths or other similar enclosures is guilty of maintaining a nuisance. The bill also provides that operating a sexually oriented business before 8 a.m. or after 10 p.m. Monday through Saturday or on Sundays or legal holidays constitutes maintenance of a nuisance. The committee adopted amendments to clarify that the sexually oriented business that is open for business before 8 a.m. or after 10 p.m. would be covered by the bill's provisions. The bill in its original form referred only to the evening hour.

Violations of the bill's provisions would be punishable as crimes of the fourth degree. In addition to any penalty imposed, this bill would permit the sentencing court to order the abatement of the nuisance and the forfeiture or destruction of any property used to maintain the nuisance.

As amended, this bill is identical to Assembly Bill No. 868 (1R).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 342

STATE OF NEW JERSEY

DATED: FEBRUARY 10, 1994

The Senate Judiciary Committee reports favorably Senate Bill No. 342.

Many adult book stores display sexually oriented movies and live sex acts to patrons in private booths or similar enclosures. These private booths often encourage anonymous sexual acts by patrons. As this type of conduct is conducive to the spread of sexually transmitted diseases, this bill would provide that any person who owns or operates a sexually oriented business which offers for public use private booths or other similar enclosures is guilty of maintaining a nuisance. The bill also provides that operating a sexually oriented business after 10 p.m. Monday through Saturday or on Sundays or legal holidays constitutes maintenance of a nuisance.

Violations of the bill's provisions would be punishable as crimes of the fourth degree. In addition to any penalty imposed, this bill would permit the sentencing court to order the abatement of the nuisance and the forfeiture or destruction of any property used to maintain the nuisance.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

Whitman signs urban 'landfill reclamation district' measure

Associated Press

TRENTON — Gov. Christie Whitman on Thursday signed a bill that will allow some municipalities to set up "landfill reclamation districts" to boost development.

"We need to use every tool at our disposal to help strengthen and revitalize our urban centers," said Whitman. "This law allows us to achieve both environmental and economic goals that benefit everyone."

Whitman signed the bill at a

landfill in Elizabeth that will be the site of the Elizabeth Metro Mall, a 1.5 million-square-foot indoor retail plaza that will include 7,500 parking spaces, including 1,500 to help nearby merchants.

"This new law will enable municipalities to convert former landfill sites into economically productive areas and to employ sound fiscal tools to finance the development," said Senate President Donald DiFrancesco, R-Union.

The law allows a municipality to impose a franchise assessment of up to 3 percent on businesses that will locate in the improvement district. It authorizes bond financing for the districts.

Assemblyman Joseph Suliga, D-Union, said the measure is expected to generate up to \$320 million in private investment in Elizabeth.

He said the city will be able to create 18,300 new jobs by developing what he said is a blighted waterfront tract.

Whitman signs bills regulating sex shops

From Press staff reports

Gov. Christie Whitman signed into law Thursday a bill restricting the operations of sexually oriented businesses.

The legislation (S-342/A-868), sponsored by Sen. William L. Gormley, R-Atlantic, extends the crime of maintaining a nuisance to cover operation of a sex shop that offers private booths, screens, enclosures or other devices that allow for sexual activity by patrons.

Penalties for violation of the fourth-degree crime could include the destruction or forfeiture of any property used to maintain the public nuisance.

The governor, who supported the proposal as a way to combat the spread of sexual diseases, signed the bill after the Legislature agreed to change a provision that would have forced the adult entertainment shops to close between 10 p.m. and 8 a.m.

Whitman proposed allowing

municipalities to set the business hours by ordinance.

In separate action, Whitman also enacted a bill (A-2544) authorizing the state Board of Public Utilities to regulate alternate providers of public telephone service.

The bill was proposed by Assemblyman John Gaffney, R-Atlantic, because of high rates charged to unsuspecting users of the pay phones.

Sen. John A. Lynch, who sponsored the Senate version (S-1426), said the bill will help rein in the exorbitant prices some companies charge for local calls made from pay phones.

Under the new law, the BPU will regulate the rates and conditions of the firms' services.