

SUBSTITUTE FOR
SENATE BILL NO. 1116

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 448, 449, 450, 451, and 462 (MCL 750.448,
750.449, 750.450, 750.451, and 750.462) and by adding
section 465a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 448. ~~Any~~ A person ~~, male or female, 17 years of age~~
2 ~~or older,~~ who ~~shall accost~~ ACCOSTS, ~~solicit~~ SOLICITS, or
3 ~~invite~~ INVITES another PERSON in ~~any~~ A public place ~~,~~ or in
4 or from ~~any~~ A building or vehicle, by word, gesture, or any
5 other means, to commit prostitution or to do any other lewd or
6 immoral act, ~~shall be~~ IS guilty of a ~~misdemeanor~~ CRIME PUN-
7 ISHABLE AS PROVIDED IN SECTION 451.

8 Sec. 449. ~~Any~~ A person ~~, male or female, 17 years of age~~
9 ~~or older,~~ who ~~shall receive~~ RECEIVES or ~~admit~~ ADMITS or

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116

2

1 ~~offer~~ OFFERS to receive or admit ~~any~~ A person into ~~any~~ A
2 place, structure, house, building, or vehicle for the purpose of
3 prostitution, lewdness, or assignation, or who ~~shall~~ knowingly
4 ~~permit any~~ PERMITS A person to remain in ~~any such place~~ A
5 PLACE, STRUCTURE, HOUSE, BUILDING, OR VEHICLE for ~~any such~~ THE
6 purpose OF PROSTITUTION, LEWDNESS, OR ASSIGNATION, ~~shall be~~ IS
7 guilty of a ~~misdemeanor~~ CRIME PUNISHABLE AS PROVIDED IN SECTION
8 451.

9 Sec. 450. ~~Any~~ A person ~~, male or female, 17 years of age~~
10 ~~or older,~~ who ~~shall aid, assist or abet~~ AIDS, ASSISTS, OR
11 ABETS another PERSON to commit ~~,~~ or offer to commit ~~, any~~ AN
12 act prohibited ~~by sections~~ UNDER SECTION 448 or 449 ~~shall be~~
13 IS guilty of a ~~misdemeanor~~ CRIME PUNISHABLE AS PROVIDED IN SEC-
14 TION 451.

15 Sec. 451. (1) ~~Any~~ A person ~~, male or female,~~ who ~~shall~~
16 ~~be adjudged guilty of a violation of sections~~ VIOLATES SECTION
17 448, 449, 449a, or 450 shall be punished by imprisonment ~~in the~~
18 ~~county jail~~ for not more than 90 days or by a fine of not more
19 than \$100.00, or both. ~~Any~~ A person ~~, male or female, 17~~
20 ~~years of age or older,~~ who ~~shall be adjudged guilty a second~~
21 ~~time of a violation of sections~~ VIOLATES SECTION 448, 449, 449a,
22 or 450 ~~, the offense being charged as a second offense, shall~~
23 ~~be~~ AND HAS A PRIOR CONVICTION IS guilty of a misdemeanor ~~,~~
24 punishable by imprisonment ~~in the county jail~~ for not more than
25 1 year or ~~by~~ a fine of not more than \$500.00, or both. ~~Any~~ A
26 person ~~, male or female, adjudged guilty a third or any~~
27 ~~subsequent time of a violation of sections~~ WHO VIOLATES SECTION

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116 as amended November 30, 2000

3

1 448, 449, 449a, or 450 ~~, the offense being charged as a third or~~
2 ~~subsequent offense, shall be~~ AND HAS 2 OR MORE PRIOR CONVICTIONS
3 IS guilty of a felony ~~, punishable by imprisonment in the~~
4 ~~state prison~~ for not more than 2 years.

5 (2) A PRIOR CONVICTION SHALL BE ESTABLISHED AT SENTENCING BY
6 1 OR MORE OF THE FOLLOWING:

7 (A) AN ABSTRACT OF CONVICTION.

8 (B) AN ADMISSION BY THE DEFENDANT.

9 (3) AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A VIO-
10 LATION OF SECTION 448, 449, 449A, OR 450 OR A LOCAL ORDINANCE
11 SUBSTANTIALLY CORRESPONDING TO SECTION 448, 449, 449A, OR 450.

12 Sec. 462. ~~Female under 17 years of age not to be employed~~
13 ~~or remain, etc., in house of prostitution--Any~~ A person who ~~,~~
14 ~~for any purpose whatever, other than prostitution, shall take or~~
15 ~~convey~~ TAKES OR CONVEYS to, or ~~employ, receive, detain or~~
16 ~~suffer~~ EMPLOYS, RECEIVES, DETAINS, OR ALLOWS A PERSON LESS THAN
17 18 YEARS OF AGE to remain in, ~~any~~ A house of prostitution,
18 house of ill-fame, bawdy-house, house of assignation, or ~~in~~ any
19 house or place for the resort of prostitutes or other disorderly
20 persons ~~, any female of the age of 17 years or under, shall be~~
21 IS guilty of a misdemeanor PUNISHABLE BY IMPRISONMENT FOR NOT
22 MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

23 SEC. 465A. (1) AN ADULT ENTERTAINMENT ESTABLISHMENT SHALL
24 NOT EXHIBIT, PROVIDE, OR FURNISH ADULT ENTERTAINMENT TO A PATRON
25 OR CUSTOMER BEFORE 10 A.M., MONDAY THROUGH SATURDAY, OR AFTER 12
26 MIDNIGHT, MONDAY THROUGH SATURDAY OR ON A SUNDAY OR A PUBLIC
27 HOLIDAY.

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116 as amended November 30, 2000

4

1 (2) AN OWNER, MANAGER, OPERATOR, PROCURER, OR EMPLOYEE OF AN
2 ADULT ENTERTAINMENT ESTABLISHMENT SHALL NOT KNOWINGLY ADMIT OR
3 ALLOW AN INDIVIDUAL LESS THAN 18 YEARS OF AGE TO REMAIN ON THE
4 PREMISES OF THE ADULT ENTERTAINMENT ESTABLISHMENT. IT IS AN
5 AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS SUBSECTION THAT
6 THE INDIVIDUAL LESS THAN 18 YEARS OF AGE PRESENTED IDENTIFICATION
7 TO THE ACCUSED THAT CONTAINED A PHOTOGRAPH OF THE INDIVIDUAL AND
8 OTHER INFORMATION THAT WOULD LEAD A REASONABLE PERSON TO BELIEVE
9 THE INDIVIDUAL WAS 18 YEARS OF AGE OR OLDER.

10 (3) A PERSON SHALL NOT KNOWINGLY APPEAR IN AN ADULT ENTER-
11 TAINMENT ESTABLISHMENT IN A NUDE OR SEMI-NUDE CONDITION UNLESS
12 THE PERSON IS 21 YEARS OF AGE OR OLDER AND
13 AT LEAST 6 FEET FROM ANY PATRON OR CUSTOMER.

14
15 (4) ALL PERSONS ENGAGED BY AN ADULT ENTERTAINMENT ESTABLISH-
16 MENT TO PROVIDE LIVE ADULT ENTERTAINMENT OR MASSAGE TO ITS CUS-
17 TOMERS OR PATRONS SHALL BE ENGAGED AS EMPLOYEES OF THE ADULT
18 ENTERTAINMENT ESTABLISHMENT.

19 (5) A PERSON ENGAGED IN THE MANAGEMENT OF AN ADULT ENTER-
20 TAINMENT ESTABLISHMENT, AND EACH OF THE FOLLOWING PERSONS, AS
21 APPLICABLE, KNOWINGLY ENGAGING IN, CARRYING ON, OR PARTICIPATING
22 IN THE OPERATION OF AN ADULT ENTERTAINMENT ESTABLISHMENT IN VIO-
23 LATION OF THIS SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A
24 FINE OF NOT MORE THAN \$10,000.00 OR IMPRISONMENT FOR NOT MORE
25 THAN 90 DAYS, OR BOTH:

26 (A) IF THE PERSON IS A CORPORATION, A PRINCIPAL OWNER,
27 DIRECTOR, OR OFFICER.

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116 as amended November 30, 2000

5

1 (B) IF THE PERSON IS A PARTNERSHIP, A GENERAL PARTNER OR
2 PRINCIPAL OWNER.

3 (C) IF THE PERSON IS A LIMITED LIABILITY COMPANY, A PRINCI-
4 PAL OWNER OR MANAGER.

5 (6) IT IS THE PURPOSE OF THIS SECTION TO REGULATE SEXUALLY
6 ORIENTED BUSINESSES TO PROMOTE THE HEALTH, SAFETY, AND GENERAL
7 WELFARE OF THE CITIZENS OF THIS STATE. THE PROVISIONS OF THIS
8 SECTION HAVE NEITHER THE PURPOSE NOR THE EFFECT OF IMPOSING A
9 LIMITATION OR RESTRICTION ON THE CONTENT OF ANY COMMUNICATIVE
10 MATERIALS, INCLUDING SEXUALLY ORIENTED MATERIALS. SIMILARLY, IT
11 IS NOT THE INTENT OR EFFECT OF THIS SECTION TO RESTRICT OR DENY
12 ACCESS TO ADULTS TO SEXUALLY ORIENTED MATERIALS PROTECTED BY THE
13 FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OR BY
14 ARTICLE I, SECTION 5 OF THE STATE CONSTITUTION OF 1963, OR TO
15 DENY ACCESS BY THE DISTRIBUTORS AND EXHIBITORS OF SEXUALLY ORI-
16 ENTED ENTERTAINMENT TO THEIR INTENDED MARKET. NEITHER IS IT THE
17 INTENT NOR THE EFFECT OF THIS SECTION TO CONDONE OR LEGITIMIZE
18 THE DISTRIBUTION OF OBSCENE MATERIAL.

(7) SUBSECTIONS (1) AND (4) DO NOT APPLY TO AN ESTABLISHMENT
LICENSED TO SELL ALCOHOLIC LIQUOR FOR CONSUMPTION ON THE PREMISES
UNDER THE LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101 TO
436.2303.

19 (8) AS USED IN THIS SECTION:

20 (A) "ADULT BOOKSTORE" MEANS AN ESTABLISHMENT THAT HAS AS A
21 SUBSTANTIAL OR SIGNIFICANT PORTION OF ITS STOCK AND TRADE IN
22 BOOKS, FILMS, VIDEOCASSETTES, OR MAGAZINES AND OTHER PERIODICALS
23 THAT ARE DISTINGUISHED OR CHARACTERIZED BY THEIR EMPHASIS ON
24 MATTER DEPICTING, DESCRIBING, OR RELATING TO SPECIFIC SEXUAL
25 ACTIVITY.

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116

6

1 (B) "ADULT CABARET" MEANS A NIGHTCLUB, BAR, RESTAURANT, OR
2 OTHER SUBSTANTIALLY SIMILAR COMMERCIAL ESTABLISHMENT THAT
3 REGULARLY FEATURES ANY OF THE FOLLOWING:

4 (i) PERSONS WHO APPEAR IN A STATE OF NUDITY OR SEMI-NUDITY.

5 (ii) LIVE PERFORMANCES THAT ARE CHARACTERIZED BY AN EMPHASIS
6 ON THE EXPOSURE OR DISPLAY OF SPECIFIC SEXUAL ACTIVITY.

7 (iii) LIVE PERFORMANCES FOR THE DISPLAY OF LINGERIE IF THE
8 SALE OF CLOTHING IS NOT THE PRIMARY BUSINESS OF THE
9 ESTABLISHMENT.

10 (C) "ADULT ENTERTAINMENT" MEANS THE SALE, RENTAL, OR EXHIBI-
11 TION FOR ANY FORM OF CONSIDERATION OF BOOKS, FILM, VIDEO CAS-
12 SETTES, MAGAZINES, PERIODICALS, OR LIVE PERFORMANCES THAT ARE
13 CHARACTERIZED BY AN EMPHASIS ON THE EXPOSURE OR DISPLAY OF SPE-
14 CIFIC SEXUAL ACTIVITY.

15 (D) "ADULT ENTERTAINMENT ESTABLISHMENT" INCLUDES ANY OF THE
16 FOLLOWING:

17 (i) AN ADULT BOOKSTORE, ADULT MOTION PICTURE THEATRE, ADULT
18 MINI-MOTION PICTURE THEATER, ADULT CABARET, OR MESSAGE
19 ESTABLISHMENT.

20 (ii) A PREMISES TO WHICH THE PUBLIC PATRONS OR MEMBERS ARE
21 INVITED OR ADMITTED AND THAT IS SO PHYSICALLY ARRANGED AS TO PRO-
22 VIDE BOOTHS, CUBICLES, ROOMS, COMPARTMENTS, OR STALLS SEPARATE
23 FROM THE COMMON AREAS OF THE PREMISES FOR THE PURPOSE OF VIEWING
24 ADULT ENTERTAINMENT, OR IN WHICH AN ENTERTAINER PROVIDES ADULT
25 ENTERTAINMENT TO A MEMBER OF THE PUBLIC, A PATRON, OR A MEMBER
26 FOR PROFIT.

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116

7

1 (iii) AN ADULT ENTERTAINMENT STUDIO OR ANY PREMISES THAT IS
2 PHYSICALLY ARRANGED AND USED AS AN ADULT ENTERTAINMENT STUDIO,
3 WHETHER ADVERTISED OR REPRESENTED AS AN ADULT ENTERTAINMENT
4 STUDIO, EXOTIC DANCE STUDIO, ENCOUNTER STUDIO, SENSITIVITY
5 STUDIO, MODEL STUDIO, ESCORT SERVICE, ESCORT, OR ANY OTHER TERM
6 OF LIKE IMPORT.

7 (E) "ADULT MINI-MOTION PICTURE THEATER" MEANS AN ENCLOSED
8 BUILDING WITH A CAPACITY OF LESS THAN 50 PERSONS REGULARLY USED
9 FOR PRESENTING MATERIAL DISTINGUISHED OR CHARACTERIZED BY AN
10 EMPHASIS ON MATTER DEPICTING, DESCRIBING, OR RELATING TO A SPE-
11 CIFIC SEXUAL ACTIVITY FOR OBSERVATION BY PATRONS IN THE
12 ESTABLISHMENT.

13 (F) "ADULT MOTION PICTURE THEATER" MEANS AN ENCLOSED BUILD-
14 ING WITH A CAPACITY OF 50 OR MORE PERSONS REGULARLY USED FOR
15 PRESENTING MATERIAL HAVING AS A DOMINANT THEME OR PRESENTING
16 MATERIAL DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON MATTER
17 DEPICTING, DESCRIBING, OR RELATING TO A SPECIFIC SEXUAL ACTIVITY
18 FOR OBSERVATION BY PATRONS IN THE ESTABLISHMENT.

19 (G) "EMPLOYEE" MEANS A PERSON WHO PERFORMS ANY SERVICE ON
20 THE PREMISES OF AN ADULT ENTERTAINMENT ESTABLISHMENT ON A
21 FULL-TIME, PART-TIME, OR CONTRACTUAL BASIS, REGARDLESS OF WHETHER
22 THE PERSON IS DESIGNATED AS AN EMPLOYEE, INDEPENDENT CONTRACTOR,
23 AGENT, OR OTHERWISE, AND REGARDLESS OF WHETHER THE PERSON IS PAID
24 A SALARY, WAGE, OR OTHER COMPENSATION BY THE OPERATOR OF THE
25 BUSINESS. EMPLOYEE DOES NOT INCLUDE A PERSON EXCLUSIVELY ON THE
26 PREMISES FOR REPAIR OR MAINTENANCE OF THE PREMISES OR EQUIPMENT
27 ON THE PREMISES OR FOR DELIVERY OF GOODS TO THE PREMISES.

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116

8

1 (H) "MASSAGE ESTABLISHMENT" MEANS A BUSINESS OR ENTERPRISE
2 THAT OFFERS, SELLS, OR PROVIDES, OR THAT HOLDS ITSELF OUT AS
3 OFFERING, SELLING, OR PROVIDING, MESSAGES THAT INCLUDE BATHING,
4 PHYSICAL MASSAGE, RUBBING, KNEADING, ANOINTING, STROKING, MANIPU-
5 LATING, OR OTHER TACTILE STIMULATION OF THE HUMAN BODY, BY EITHER
6 MALE OR FEMALE EMPLOYEES OR ATTENDANTS, BY HAND OR BY ELECTRICAL
7 OR MECHANICAL DEVICE, ON OR OFF THE PREMISES. MESSAGE ESTABLISH-
8 MENT DOES NOT INCLUDE THE BUSINESS OR OCCUPATION OF A BARBER,
9 COSMETOLOGIST, OR PERSON ENGAGED IN THE PRACTICE OF MORTUARY
10 SCIENCE LICENSED UNDER THIS ACT, A CHIROPRACTOR, DENTIST, PHYSI-
11 CIAN, PERSON ENGAGED IN THE PRACTICE OF NURSING, OPTOMETRIST,
12 PHYSICAL THERAPIST, PODIATRIST, MEDICAL MASSAGE THERAPIST, OR
13 OCCUPATIONAL THERAPIST LICENSED OR REGISTERED UNDER ARTICLE 15 OF
14 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO 333.18838,
15 A HEALTH FACILITY OR AGENCY LICENSED AND CERTIFIED UNDER ARTICLE
16 17 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO
17 333.22260, AN ATHLETIC COACH OR ATHLETIC TRAINER, OR A BUSINESS
18 OR ENTERPRISE THAT ONLY UTILIZES MESSAGE THERAPISTS TO SELL OR
19 PROVIDE MESSAGES.

20 (I) "MESSAGE THERAPIST" MEANS AN INDIVIDUAL WHO MEETS ANY OF
21 THE FOLLOWING:

22 (i) IF AT LEAST 500 HOURS OF TRAINING IN MESSAGE THERAPY AND
23 BODYWORK IS REQUIRED AS A CONDITION OF MEMBERSHIP, IS AN ACTIVE
24 PRACTICING MEMBER OF THE AMERICAN MESSAGE THERAPY ASSOCIATION,
25 AMERICAN MEDICAL MESSAGE ASSOCIATION, ASSOCIATED BODYWORK AND
26 MESSAGE PROFESSIONALS, INTERNATIONAL MYOMASSETHICS FEDERATION, OR
27 OTHER MESSAGE ASSOCIATION ACCEPTABLE TO THE DEPARTMENT.

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116

9

1 (ii) IS A GRADUATE OF A MASSAGE THERAPY SCHOOL LICENSED OR
2 CERTIFIED BY ANY STATE, IF THE MASSAGE THERAPY SCHOOL REQUIRES AT
3 LEAST 500 HOURS OF TRAINING IN MASSAGE THERAPY AND BODYWORK AS A
4 REQUIREMENT OF GRADUATION.

5 (iii) IS LICENSED OR CERTIFIED AS A MASSAGE THERAPIST BY ANY
6 STATE THAT REQUIRES AT LEAST 500 HOURS OF TRAINING IN MASSAGE
7 THERAPY AND BODYWORK AS A CONDITION OF THE LICENSURE OR
8 CERTIFICATION.

9 (iv) HAS SUCCESSFULLY COMPLETED A MASSAGE TRAINING PROGRAM
10 AT A COMMUNITY COLLEGE, COLLEGE OR UNIVERSITY, PROPRIETARY
11 SCHOOL, OR VOCATIONAL OR TECHNICAL SCHOOL IN ANY STATE, IF THE
12 MASSAGE TRAINING PROGRAM REQUIRES AT LEAST 500 HOURS OF TRAINING
13 IN MASSAGE THERAPY AND BODYWORK AS A REQUIREMENT OF COMPLETION.

14 (J) "PARTNER" MEANS A GENERAL OR LIMITED PARTNER.

15 (K) "PARTNERSHIP" MEANS A GENERAL OR LIMITED PARTNERSHIP.

16 (L) "PRINCIPAL OWNER" MEANS A PERSON WHO OWNS 20% OR MORE OF
17 THE OUTSTANDING EQUITY INTERESTS OF A LICENSEE INCLUDING, BUT NOT
18 LIMITED TO, STOCK IN A CORPORATION, PARTNERSHIP INTEREST IN A
19 PARTNERSHIP, OR MEMBERSHIP INTEREST IN A LIMITED LIABILITY
20 COMPANY.

21 (M) "PUBLIC HOLIDAY" MEANS A DAY OR A PART OF A DAY SPECI-
22 FIED AS A PUBLIC HOLIDAY UNDER 1865 PA 124, MCL 435.101 TO
23 435.103.

24 (N) "REGULARLY FEATURES" OR "REGULARLY USED" MEANS A CON-
25 TINUING AND SUBSTANTIAL COURSE OF CONDUCT IN WHICH FILMS OR PER-
26 FORMANCES SHOWN OR PRESENTED CONSTITUTE A SUBSTANTIAL PORTION OF

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116

10

1 THE FILMS OR PERFORMANCES OFFERED AS PART OF THE ONGOING
2 BUSINESS.

3 (O) "SPECIFIC SEXUAL ACTIVITY" MEANS 1 OR MORE OF THE FOL-
4 LOWING SEXUAL ACTIVITIES OR EXHIBITIONS OF ANATOMICAL AREAS:

5 (i) HUMAN GENITALS IN A STATE OF SEXUAL STIMULATION OR
6 AROUSAL.

7 (ii) AN ACT OR REPRESENTATION OF AN ACT OF HUMAN MASTURBA-
8 TION, SEXUAL INTERCOURSE, SODOMY, CUNNILINGUS, FELLATIO, OR
9 EXCRETORY FUNCTION.

10 (iii) FONDLING OR EROTIC TOUCHING OF HUMAN GENITALS, PUBIC
11 REGIONS, BUTTOCKS, OR FEMALE BREASTS.

12 (iv) LESS THAN COMPLETELY AND OPAQUELY COVERED HUMAN GENI-
13 TALS OR PUBIC REGIONS, BUTTOCKS, OR FEMALE BREASTS BELOW THE TOP
14 OF THE AREOLA.

15 (v) HUMAN MALE GENITALS IN A DISCERNIBLY TURGID STATE, EVEN
16 IF COMPLETELY AND OPAQUELY COVERED.

17 (P) "TREAT" MEANS TO ADMINISTER THE SERVICES PROVIDED BY A
18 MASSAGE ESTABLISHMENT.

19 Enacting section 1. This amendatory act takes effect June
20 1, 2001.

21 Enacting section 2. This amendatory act does not take
22 effect unless all of the following bills of the 90th Legislature
23 are enacted into law:

24 (a) Senate Bill No. 1293.

25 (b) Senate Bill No. 1295.

26 (c) Senate Bill No. 1296.

SB 1116, As Passed Senate, November 30, 2000

Senate Bill No. 1116 11

- 1 (d) Senate Bill No. 1297.
- 2 (e) House Bill No. 4327.
- 3 (f) House Bill No. 5133.
- 4 (g) House Bill No. 5134.