



HOUSE BILL No. 5124

November 10, 1999, Introduced by Rep. Bishop and referred to the Committee on Constitutional Law and Ethics.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 303a (MCL 339.303a), as amended by 1995
PA 183, and by adding article 17A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The terms provided for in this act shall com-
2 mence on the following dates:

3	Accountancy	July 1
4	ADULT ENTERTAINMENT ESTABLISHMENTS	JANUARY 1
5	Architects	April 1
6	Athletic board of control	April 1
7	Barbers	October 1
8	Collection agencies	July 1

1	Community planners	July 1
2	Cosmetology	January 1
3	Employment agencies	October 1
4	Foresters	April 1
5	Hearing aid dealers	October 1
6	Land surveyors	April 1
7	Landscape architects	July 1
8	Marriage counselors	October 1
9	MASSAGISTS	JANUARY 1
10	Mortuary science	July 1
11	Nursing home administrators	January 1
12	Professional engineers	April 1
13	Real estate appraisers	July 1
14	Real estate brokers and salespersons	July 1
15	Residential builders	April 1
16	Social workers	October 1

ARTICLE 17A

SEC. 1751. AS USED IN THIS ARTICLE:

(A) "ADULT" MEANS A PERSON 18 YEARS OF AGE OR OLDER.

(B) "ADULT BOOKSTORE" MEANS A BUSINESS THAT HAS BOOKS, MAGAZINES, OR OTHER PERIODICALS AS PART OF ITS STOCK AND THAT FOR A FEE OFFERS, SELLS, PROVIDES, OR RENTS 1 OR MORE OF THE FOLLOWING:

(i) IF THE BUSINESS RESTRICTS OR PURPORTS TO RESTRICT ADMISSION TO ADULTS OR A SPECIFIED CLASS OF ADULTS, SEXUALLY ORIENTED MATERIAL.

1 (ii) SEXUALLY ORIENTED MATERIAL THAT IS AVAILABLE FOR
2 VIEWING BY PATRONS ON THE PREMISES WITH A MOVIE MACHINE OR SLIDE
3 PROJECTOR.

4 (iii) SEXUALLY ORIENTED MATERIAL, A SUBSTANTIAL PORTION OF
5 THE CONTENTS OF WHICH IS DEVOTED TO THE PICTORIAL DEPICTION OF
6 SADISM, MASOCHISM, OR BESTIALITY.

7 (iv) SEXUALLY ORIENTED MATERIAL THAT HAS AS ITS PRINCIPAL
8 THEME THE DEPICTION OF SEXUAL ACTIVITY BY, OR LASCIVIOUS EXHIBI-
9 TION OF THE UNCOVERED GENITALS, PUBIC REGION, OR BUTTOCKS OF,
10 CHILDREN WHO ARE OR APPEAR TO BE UNDER THE AGE OF 18.

11 (C) "ADULT ENTERTAINMENT ESTABLISHMENT" MEANS AN ADULT BOOK-
12 STORE, ADULT SHOW, ADULT THEATER, MASSAGE ESTABLISHMENT, RELAX-
13 ATION ESTABLISHMENT, OR OTHER COMMERCIAL ESTABLISHMENT, BUSINESS,
14 OR SERVICE, THAT UTILIZES 10% OR MORE OF ITS TOTAL FLOOR SPACE
15 FOR THE STORAGE, DISPLAY, SHOWING, OR SALE OF SEXUALLY ORIENTED
16 MATERIAL, DEVICES, OBJECTS, OR PARAPHERNALIA, SPECIFIC SEXUAL
17 ACTIVITIES, SERVICES, OR PERFORMANCES, OR ANY COMBINATION OF
18 THEM, IN ANY FORM, INCLUDING, BUT NOT LIMITED TO, PRINTED,
19 FILMED, RECORDED, OR LIVE.

20 (D) "ADULT SHOW" MEANS AN ADULT SHOW, EXHIBITION, PER-
21 FORMANCE, OR PRESENTATION THAT CONTAINS AN ACT OR DEPICTION OF
22 SPECIFIC SEXUAL ACTIVITY. ADULT SHOW INCLUDES, BUT IS NOT
23 LIMITED TO, AN ESTABLISHMENT COMMONLY KNOWN AS A "PEEP SHOW".

24 (E) "ADULT THEATER" MEANS AN ENCLOSED BUILDING USED FOR
25 PRESENTING FILMS DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON
26 MATTER DEPICTING, DESCRIBING, OR RELATING TO SPECIFIC SEXUAL
27 ACTIVITY FOR OBSERVATION BY PATRONS.

1 (F) "BESTIALITY" MEANS SEXUAL ACTIVITY, ACTUAL OR SIMULATED,
2 BETWEEN A HUMAN BEING AND AN ANIMAL.

3 (G) "MASOCHISM" MEANS SEXUAL GRATIFICATION ACHIEVED BY A
4 PERSON THROUGH, OR THE ASSOCIATION OF SEXUAL ACTIVITY WITH, SUB-
5 MISSION OR SUBJECTION TO PHYSICAL PAIN, SUFFERING, HUMILIATION,
6 TORTURE, OR DEATH.

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

1 ASSOCIATION, THE COMMISSION ON MESSAGE TRAINING ACCREDITATION, OR
2 THE DEPARTMENT TO SELL OR PROVIDE MESSAGES.

3 (I) "MASSAGIST" MEANS AN INDIVIDUAL WHO PERFORMS MESSAGE
4 SERVICES FOR A MESSAGE ESTABLISHMENT OR A SELF-EMPLOYED INDIVID-
5 UAL WHO PERFORMS MESSAGE SERVICES. MASSAGIST DOES NOT INCLUDE AN
6 INDIVIDUAL WHO HAS GRADUATED FROM A MESSAGE THERAPY TRAINING PRO-
7 GRAM ACCREDITED OR APPROVED BY THE NATIONAL ASSOCIATION OF MAS-
8 SAGE THERAPISTS, THE AMERICAN MESSAGE THERAPY ASSOCIATION, THE
9 COMMISSION ON MESSAGE TRAINING ACCREDITATION, OR THE DEPARTMENT.

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

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

12 (L) "PEACE OFFICER" MEANS THE ATTORNEY GENERAL, A DEPUTY OR
13 ASSISTANT TO THE ATTORNEY GENERAL, OR A LAW ENFORCEMENT OFFICER
14 AS THAT TERM IS DEFINED IN SECTION 2 OF THE MICHIGAN LAW ENFORCE-
15 MENT OFFICERS TRAINING COUNCIL ACT, 1965 PA 203, MCL 28.602.

16 (M) "PRINCIPAL OWNER" MEANS A PERSON WHO OWNS 10% 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 (N) "RELAXATION ESTABLISHMENT" MEANS A COMMERCIAL BUSINESS,
22 ENTERPRISE, OR SERVICE THAT OFFERS OR HOLDS ITSELF OUT AS OFFER-
23 ING CONVERSATION OR RELAXATION OR ANY OTHER SERVICES IN WHICH AN
24 EMPLOYEE, ATTENDANT, OR PATRON IS INVOLVED IN SPECIFIC SEXUAL
25 ACTIVITY OR REPRESENTATION OF SEXUAL ACTIVITY. RELAXATION ESTAB-
26 LISHMENT INCLUDES, BUT IS NOT LIMITED TO, AN ESTABLISHMENT

1 COMMONLY KNOWN AS A "CONVERSATION PARLOR", "RELAXATION STUDIO",
2 "HEALTH SALON", OR "CALL SERVICE".

3 (O) "SADISM" MEANS SEXUAL GRATIFICATION ACHIEVED THROUGH, OR
4 THE ASSOCIATION OF SEXUAL ACTIVITY WITH, THE INFLICTION OF PHYSI-
5 CAL PAIN, SUFFERING, HUMILIATION, TORTURE, OR DEATH UPON ANOTHER
6 PERSON OR ANIMAL.

7 (P) "SEXUALLY ORIENTED MATERIAL" MEANS A BOOK, ARTICLE, MAG-
8 AZINE, PUBLICATION, OTHER WRITTEN MATTER, DRAWING, ETCHING,
9 PAINTING, PHOTOGRAPH, MOTION PICTURE FILM, OR SOUND RECORDING
10 THAT DEPICTS SEXUAL ACTIVITY, ACTUAL OR SIMULATED, INVOLVING
11 HUMAN BEINGS, OR HUMAN BEINGS AND ANIMALS, OR WHICH EXHIBITS
12 UNCOVERED HUMAN GENITALS OR PUBIC REGIONS IN A LEWD OR LASCIVIOUS
13 MANNER, OR WHICH EXHIBITS HUMAN MALE GENITALS IN A DISCERNIBLY
14 TURGID STATE EVEN IF COMPLETELY COVERED.

15 (Q) "SPECIFIC SEXUAL ACTIVITY" MEANS 1 OR MORE OF THE FOL-
16 LOWING SEXUAL ACTIVITIES OR EXHIBITIONS OF ANATOMICAL AREAS:

17 (i) HUMAN GENITALS IN A STATE OF SEXUAL STIMULATION OR
18 AROUSAL.

19 (ii) AN ACT OR REPRESENTATION OF AN ACT OF HUMAN MASTURBA-
20 TION, SEXUAL INTERCOURSE, SODOMY, CUNNILINGUS, FELLATIO, OR
21 EXCRETORY FUNCTION.

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

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

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

3 (R) "TREAT" MEANS TO ADMINISTER THE SERVICES PROVIDED BY A
4 MASSAGE ESTABLISHMENT.

5 SEC. 1752. (1) BEGINNING 90 DAYS AFTER THE EFFECTIVE DATE
6 OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A PERSON SHALL NOT
7 ENGAGE IN, CARRY ON, OR PARTICIPATE IN THE OPERATION OF AN ADULT
8 ENTERTAINMENT ESTABLISHMENT OR ENGAGE IN THE OCCUPATION OF MASSA-
9 GIST UNLESS THE PERSON IS LICENSED BY THE DEPARTMENT UNDER THIS
10 ARTICLE.

11 (2) NOTWITHSTANDING SECTION 601(3), 1 OR MORE OF THE FOLLOW-
12 ING APPLY TO A VIOLATION OF SUBSECTION (1):

13 (A) A PERSON WHO ENGAGES IN THE OCCUPATION OF MASSAGIST IN
14 VIOLATION OF SUBSECTION (1) IS GUILTY OF A MISDEMEANOR PUNISHABLE
15 BY A FINE OF NOT MORE THAN \$500.00 OR IMPRISONMENT FOR NOT MORE
16 THAN 6 MONTHS, OR BOTH.

17 (B) A PERSON, ENGAGED IN THE MANAGEMENT OF AN ADULT ENTER-
18 TAINMENT ESTABLISHMENT, AND EACH OF THE FOLLOWING PERSONS, AS
19 APPLICABLE, ENGAGING IN, CARRYING ON, OR PARTICIPATING IN THE
20 OPERATION OF AN ADULT ENTERTAINMENT ESTABLISHMENT IN VIOLATION OF
21 SUBSECTION (1) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF
22 NOT MORE THAN \$10,000.00 OR IMPRISONMENT FOR NOT MORE THAN 6
23 MONTHS, OR BOTH:

24 (i) IF THE PERSON IS A CORPORATION, A PRINCIPAL OWNER,
25 DIRECTOR, OR OFFICER.

26 (ii) IF THE PERSON IS A PARTNERSHIP, A GENERAL PARTNER OR
27 PRINCIPAL OWNER.

1 (iii) IF THE PERSON IS A LIMITED LIABILITY COMPANY, A
2 PRINCIPAL OWNER OR MANAGER.

3 (C) A PERSON ENGAGING IN, CARRYING ON, OR PARTICIPATING IN
4 THE OPERATION OF A MASSAGE ESTABLISHMENT THAT IS FOUND TO HAVE
5 UPON THE PREMISES A MASSAGIST IN VIOLATION OF SUBSECTION (1) IS
6 GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN
7 \$2,500.00 AND NOT MORE THAN \$10,000.00. A FINE ASSESSED UNDER
8 THIS SUBDIVISION SHALL NOT BE SUSPENDED. THE ARREST, PROSECU-
9 TION, OR CONVICTION OF THE MASSAGIST FOR VIOLATION OF SUBSECTION
10 (1) IS NOT REQUIRED FOR ASSESSMENT OF A PENALTY UNDER THIS
11 SUBDIVISION.

12 (3) A CERTIFICATE BY THE DEPARTMENT THAT A DILIGENT SEARCH
13 OF THE DEPARTMENT'S RECORDS KEPT IN CONFORMITY WITH THIS ARTICLE
14 HAS FAILED TO DISCLOSE THE EXISTENCE OF A VALID LICENSE FOR AN
15 ADULT ENTERTAINMENT ESTABLISHMENT IS PRIMA FACIE EVIDENCE OF A
16 VIOLATION OF SUBSECTION (1).

17 Enacting section 1. This amendatory act does not take
18 effect unless all of the following bills of the 90th Legislature
19 are enacted into law:

20 (a) Senate Bill No. _____ or House Bill No. 5125
21 (request no. 04171'99 a *).

22 (b) Senate Bill No. _____ or House Bill No. 5126
23 (request no. 05234'99).

24 (c) Senate Bill No. _____ or House Bill No. 5127
25 (request no. 05235'99).

26 (d) Senate Bill No. _____ or House Bill No. 5128
27 (request no. 05236'99).

1 (e) Senate Bill No. _____ or House Bill No. 5129
2 (request no. 05237'99).

3 (f) Senate Bill No. _____ or House Bill No. 5130
4 (request no. 05238'99).

5 (g) Senate Bill No. _____ or House Bill No. 5131
6 (request no. 05239'99).

7 (h) Senate Bill No. _____ or House Bill No. 5132
8 (request no. 05240'99).