



Adult-oriented Businesses

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Table of Contents

Adult-oriented Businesses	3
---------------------------------	---

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Reference Number: MTAS-72

Three state laws regulate adult-oriented businesses:

- T.C.A. §§ 7-51-1101, *et seq.* (Adult-Oriented Establishment Registration Act of 1998). Counties are authorized (but not required) to adopt by a two-thirds vote the Adult-Oriented Establishment Registration Act of 1998. That act expressly preserves the right of municipalities to adopt and enforce "other lawful and reasonable restrictions, regulations, licensing, zoning, and other criminal, civil, or administrative provisions concerning the location, configuration, code compliance, or other business operations or requirements of adult-oriented establishments." T.C.A. § 7-51-1121. The act defines and covers adult bookstores, adult mini-motion and motion picture theaters, adult cabarets, escort agencies, sexual-encounter centers, massage parlors, rap parlors, saunas, and similar businesses. The act prohibits adult businesses within 1,000 feet of any child-care facility, school, public park, residence, family recreation center, or place of worship, but it does not prevent local ordinances setting distance requirements. In any county that has adopted the act, such businesses must obtain a license from the county. The act prescribes the rules and regulations that adult-oriented businesses must follow, and the adult-oriented establishment board (created by the county) is empowered to adopt additional rules and to suspend and revoke the licenses of adult-oriented businesses. In addition, first offenders may be fined up to \$500. A subsequent offense is a Class A misdemeanor. This statute was upheld in the case of *American Show Bar Series Inc. v. Sullivan County*, 30 S.W. 3d 324 (Tenn. App. 2000).
- Municipalities that disqualify persons with criminal records from operating or performing in these establishments are required to conduct a criminal records check on applicants through the TBI and FBI. The city must require two sets of fingerprints, which must be sent to the TBI. Costs must be paid by the city but may be added to the application fee. T.C.A. § 7-51-1122.
- T.C.A. § 27-9-111 makes mandatory the judicial review of decisions of boards and commissions that revoke, suspend, or deny permits or licenses required for engaging in adult businesses. The court must hear and decide the matter within 40 days of the date the court granted certiorari.
- T.C.A. § 57-4-204 prohibits certain sexual and pornographic conduct in establishments that sell intoxicating liquor. Generally, the Alcoholic Beverage Commission is the agency designated to enforce the statute. However, the statute expressly provides that "Each county, city, or metropolitan government is empowered upon approval by a two-thirds vote of its legislative body to authorize its law enforcement officers to conduct investigations into alleged violations of subsections (a)-(d) [which contain the prohibited conduct], and such law enforcement officers shall report such violations to the commission for appropriate action by such commission." T.C.A. § 57-4-204(e).
- T.C.A. § 39-13-517. This statute prohibits public indecency, the definition of which includes various kinds of sexual activities. Its definition of "public place" includes, but is not limited to, streets, sidewalks, parks, beaches, and business and commercial establishments of various kinds. It preserves the right of local governments to regulate "any activity where alcoholic beverages, including malt beverages, are sold for consumption." T.C.A. § 39-13-517(g). First and second offenses are Class B misdemeanors carrying a fine of \$500. A third or subsequent offense is a Class A misdemeanor with a fine of \$1,500 and a jail term of up to 11 months, 29 days, or both.

Many municipalities also have ordinances regulating adult-oriented businesses. At both the state and local levels, the most successful approach to the regulation of such businesses generally has been based upon the regulation of their "secondary effects." (See U.S. Supreme Court cases *Renton v. Playtime Theaters Inc.*, 475 U.S. 41 (1986); *Barnes v. Playtime Theaters Inc.*, 501 U.S. 560 (1991); and *City of Erie v. Pap's A.M.*, *tda "Kandyland,"* 130 S.Ct. 1382 (2000)). Competent legal advice should be sought and the federal and state cases interpreting the above and similar statutes in other jurisdictions should be read before a municipality adopts or enforces either a state law or municipal ordinance regulating adult-oriented businesses.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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