

**Negative Secondary Effects of
Sexually Oriented Businesses
HB 2054**

by

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Committee
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Speaker background:

Co-author, *Local Regulation of Adult Businesses, 2013 Ed. (Thomson West)*

Cases:

- **Ocello v. Koster, A.G. of Mo., 354 S.W.3d 187 (Mo. 2011) (banc) (upholding same law in Missouri)**
- **Enlightened Reading, Inc. v. Jackson County, Mo., 2009 WL 792492 (W.D. Mo. 2009) (upholding same law plus licensing requirements)**
- **Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007)**
- **Heideman v. South Salt Lake City, 165 Fed. Appx. 627 (10th Cir. 2006)**

***Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)
(upholding 1,000-ft. rule)**

- 1. Legislatures can be proactive to prevent negative effects**
- 2. Any evidence “reasonably believed to be relevant” is sufficient**
- 3. Government is given leeway to address negative effects**

Sources of Secondary Effects Information

- 1. Land Use Studies**
- 2. Crime Reports**
- 3. Judicial Opinions**
- 4. Investigator Affidavits**
- 5. Anecdotal Reports**

Types of Secondary Effects

- 1. Adverse impacts on surrounding properties**
- 2. Crime and its attendant public safety risks**
- 3. Illicit sexual conduct and potential disease**
- 4. Illicit drug use and trafficking**
- 5. Litter, aesthetic impacts, noise, blight**

Cases upholding similar regulations:

- 1. *People ex rel. Deters v. Lion's Den*, No. 5-05-0413 (Ill. Ct. App. 2007) (1,000-ft. setback)**
- 2. *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (nudity prohibition)**
- 3. *Heideman v. South Salt Lake City*, 165 Fed. Appx. 627 (10th Cir. 2006)**
- 4. *Jake's Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002) (6-ft. rule)**
- 5. *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998) (statewide hours)**

HB 2054 includes common-sense regulations that have been repeatedly upheld by the courts

***Every* federal appellate case to consider dancer-patron buffers, no-touch rules, hours of operation, and open-booth regulations has upheld them as constitutional.**

Secondary effects data relevant to regulating sexually oriented clubs and bookstores:

- 1. Summaries of Key Reports**
- 2. Phoenix, Arizona**
- 3. Indianapolis, Indiana**
- 4. Garden Grove, California**
- 5. Whittier, California**

Secondary effects data relevant to regulating sexually oriented businesses:

- 6. Austin, Texas**
- 7. Greensboro, North Carolina**
- 8. Amarillo, Texas**
- 9. Kennedale, Texas**
- 10. Spokane, Washington Evidence re: Retail Adult Bookstores**
- 11. 2008 Jackson County, Missouri Expert Report (describing flaws in industry reports)**

Findings of expert witnesses:

- 1. Finding of secondary effects from sexually oriented businesses is scientifically robust, being confirmed in wide variety of data sources**
- 2. The legislature has a substantial government interest in regulating adult businesses to prevent the identified negative secondary effects**
- 3. Industry "counter-studies" based on ever-changing methodologies and faulty data (calls-for-service (CFS) to the police)**
 - CFS are weakly correlated to actual crime**
 - Most vice crimes never result in CFS**

**Industry experts' attacks
insufficient:**

- 1. *City of Erie v. Pap's A.M.*,
529 U.S. 277 (2000) (Linz)**
- 2. *Daytona Grand, Inc. v. City of Daytona Beach*,
490 F.3d 860 (11th Cir. 2007) (Linz, Fisher)**
- 3. *Doctor John's, Inc. v. Wahlen*,
542 F.3d 787 (10th Cir. 2008)**
- 4. *Heideman v. South Salt Lake City*,
165 Fed. Appx. 627 (10th Cir. 2006)**
- 5. *SOB, Inc. v. County of Benton*,
317 F.3d 856 (8th Cir. 2003) (Linz)**

**Industry experts' attacks
insufficient (cont'd):**

- 6. *Gammoh v. City of La Habra*,
395 F.3d 1114 (9th Cir. 2005) (Linz)**
- 7. *G.M. Enterprises, Inc. v. Town of St. Joseph*,
350 F.3d 631 (7th Cir. 2003) (Linz)**
- 8. *World Wide Video of Washington v. Spokane*,
368 F.3d 1186 (9th Cir. 2004) (McLaughlin)**
- 9. *Fantasy Ranch, Inc. v. City of Arlington*,
459 F.3d 546 (5th Cir. 2006) (Morris)**
- 10. *Fantasyland Video, Inc. v. County of San
Diego*, 505 F.3d 996 (9th Cir. 2007) (Linz,
Goldenring)**