

1 **H. B. 2724**

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3 (By Delegates Sobonya, Rowan and Reynolds)
4 [Introduced January 21, 2011; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §61-8F-1, §61-8F-2,
12 §61-8F-3, §61-8F-4, §61-8F-5, §61-8F-6 and §61-8F-7, all
13 relating to the operation and activities of sexually oriented
14 businesses; criminal penalties.

15 *Be it enacted by the Legislature of West Virginia:*

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto a new article, designated §61-8F-1, §61-8F-2,
18 §61-8F-3, §61-8F-4, §61-8F-5, §61-8F-6 and §61-8F-7, all to read as
19 follows:

20 **ARTICLE 8F. REGULATION OF SEXUALLY ORIENTED BUSINESSES.**

21 **§61-8F-1. Short title.**

22 This article shall be known and may be cited as the "Sexually
23 Oriented Businesses Regulation Act."

1 **§61-8F-2. Legislative findings.**

2 The Legislature finds and declares as follows:

3 (1) Crime statistics show that all types of crimes, especially
4 sex-related crimes, occur with more frequency in neighborhoods
5 where sexually oriented businesses are located.

6 (2) Nude dancing in adult establishments encourages
7 prostitution, increases sexual assaults and attracts other criminal
8 activity.

9 (3) Nude dancing in adult establishments increases the
10 likelihood of drug-dealing and drug use.

11 (4) Persons frequent certain adult theaters, adult arcades,
12 and other sexually oriented businesses for the purpose of engaging
13 in sex within the premises of such sexually oriented businesses.

14 (5) It is desirable to reduce the incidences of crime, disease
15 and public sexual acts that occur in and around sexually oriented
16 businesses.

17 (6) It is the purpose of this article to regulate the
18 operation of sexually oriented businesses in order to promote the
19 health, safety, morals and general welfare of the citizens of this
20 state.

21 **§61-8F-3. Definitions.**

22 (a) "Adult arcade" means any place to which the public is
23 permitted or invited wherein coin-operated or slug-operated or
24 electronically, electrically or mechanically controlled still or

1 motion picture machines, projectors or other image-producing
2 devices are maintained to show images to five or fewer persons per
3 machine at any one time, and where the images so displayed are
4 distinguished or characterized by the depicting or describing of
5 "specified sexual activities" or "specified anatomical areas."

6 (b) "Adult bookstore" or "adult video store" means a
7 commercial establishment that, as one of its principal business
8 purposes, offers for sale or rental for any form of consideration
9 any one or more of the following:

10 (1) Books, magazines, periodicals or other printed matter or
11 photographs, films, motion picture, video cassettes or video
12 reproductions, slides or other visual representations that depict
13 or describe "specified sexual activities" or "specified anatomical
14 areas"; or

15 (2) Instruments, devices or paraphernalia that are designed
16 for use in connection with "specified sexual activities."

17 A commercial establishment may have other principal business
18 purposes that do not involve the offering for sale or rental of
19 material depicting or describing "specified sexual activities" or
20 "specified anatomical areas" and still be categorized as "adult
21 book store" or "adult video store." These other business purposes
22 will not serve to exempt such commercial establishments from being
23 categorized as an adult bookstore or adult video store so long as
24 one of its principal business purposes is the offering for sale or

1 rental for consideration the specified materials that depict or
2 describe "specified sexual activities" or "specified anatomical
3 areas." A principal business purpose need not be a primary use of
4 an establishment so long as it is a significant use based upon the
5 visible inventory or commercial activity of the establishment.

6 (c) "Adult cabaret" means a club, nightclub, bar, restaurant
7 or similar commercial establishment that regularly features:

8 (1) Persons who appear in a state of nudity or seminudity; or

9 (2) Live performances that are characterized by the exposure
10 of "specified anatomical areas" or by "specified sexual
11 activities"; or

12 (3) Films, motion pictures, video cassettes, slides or other
13 photographic reproductions that are characterized by the depiction
14 or description of "specified sexual activities"; or "specified
15 anatomical areas"; or

16 (4) Persons who engage in erotic dancing or performances that
17 are intended for the sexual interests or titillation of an audience
18 or customers.

19 (d) "Adult motion picture theater" means a commercial
20 establishment where, for any form of consideration, films, motion
21 pictures, video cassettes, slides or similar photographic
22 reproductions are regularly shown that are characterized by the
23 depiction or description of "specified sexual activities" or
24 "specified anatomical areas."

1 (e) "Adult theater" means a theater, concert hall, Auditorium
2 or similar commercial establishment that regularly features persons
3 who appear, in person, in a state of nudity and/or seminudity,
4 and/or live performances that are characterized by the exposure of
5 "specified anatomical areas" or by "specified sexual activities."

6 (f) "Hours of operation" means the period of day a sexually
7 oriented business may offer for use, view, rent, sale or
8 consumption, entertainment, beverages or other types of products or
9 services.

10 (g) "Live theatrical performance" means a play, opera, ballet,
11 concert or musical drama.

12 (h) "Nude model studio" means any place where a person who
13 appears in a state of nudity or displays "specified anatomical
14 areas" is provided to be observed, sketched, drawn, painted,
15 sculptured, photographed or similarly depicted by other persons for
16 consideration.

17 (i) "Nudity" or a "state of nudity" means the appearance of a
18 human bare buttock, anus, anal cleft or cleavage, pubic area, male
19 genitals, female genitals or vulva, with less than a fully opaque
20 covering; or a female breast with less than a fully opaque covering
21 of any part of the areola; or human male genitals in a discernibly
22 turgid state even if completely and opaquely covered.

23 (j) "Seminude or seminudity" means the appearance of the
24 female breast below a horizontal line across the top of the areola

1 at its highest point. This definition shall include the entire
2 lower portion of the human female breast, but shall not include any
3 portion of the cleavage of the human female breast exhibited by a
4 dress, blouse, skirt or leotard.

5 (k) "Sexual encounter center" means a business or commercial
6 enterprise that, as one of its principal business purposes, offers
7 for any form of consideration:

8 (1) Physical contact in the form of wrestling or tumbling
9 between persons of the opposite sex; or

10 (2) Activities between male and female persons and/or persons
11 of the same sex when one or more of the persons is in a state of
12 nudity or seminudity.

13 (l) "Sexually oriented business" means an adult arcade, adult
14 bookstore or adult video store, adult cabaret, adult motion picture
15 theater, adult theater, nude model studio or sexual encounter
16 center.

17 (m) "Specified anatomical areas" means:

18 (1) The human male genitals in a discernibly turgid state,
19 even if fully and opaquely covered;

20 (2) Less than completely and opaquely covered human genitals,
21 pubic region, buttocks or a female breast below a point immediately
22 above the top of the areola.

23 (3) Notwithstanding any other provision in this article,
24 movies rated G, PG, PG-13 or R by the Motion Picture Association of

1 America (MPAA), or live theatrical performances with serious
2 artistic, social or political value, that depict or describe
3 specified anatomical areas, are expressly exempted from the
4 provisions of this article.

5 (n) "Specified sexual activities" means and includes any of
6 the following:

7 (1) The fondling or other erotic touching of human genitals,
8 pubic region, buttocks, anus or female breasts, whether covered or
9 uncovered;

10 (2) Sex acts, normal or perverted, actual or simulated,
11 including intercourse, oral copulation or sodomy;

12 (3) Masturbation, actual or simulated; or

13 (4) Excretory functions as part of or in connection with any
14 of the activities set forth in (1) through (3) above.

15 (5) Notwithstanding any other provision in this chapter,
16 movies rated G, PG, PG-13, or R by the Motion Picture Association
17 of America (MPAA), or live theatrical performances with serious
18 artistic, social or political value, that depict or describe
19 specified sexual activities, are expressly exempted from the
20 provisions of this article.

21 **§61-8F-4. Hours of operation; prohibitions.**

22 A sexually oriented business, as defined in section three of
23 this article, may not remain open at any time between the hours of
24 eleven p.m. and ten a.m. on Monday through Saturday. A sexually

1 oriented business may not open or be open on Sundays or legal
2 holidays recognized by this state.

3 **§61-8F-5. Regulation of certain activities; prohibitions.**

4 (a) A person may not appear or be allowed to appear in person
5 in a nude or seminude condition on a sexually oriented business
6 premises, unless the person is an employee who, while nude or
7 seminude, is at least ten feet from any patron or customer and on
8 a stage raised at least two feet from the floor.

9 (b) A person may not, while nude or seminude, solicit or be
10 allowed to solicit any pay or gratuity from any patron or customer,
11 pay or give, or be allowed to pay or give, any gratuity to any
12 employee while the employee is nude or seminude on the sexually
13 oriented business premises.

14 (c) An employee may not, while nude or seminude, touch or be
15 allowed to touch, a patron, or the clothing of a patron, while the
16 employee is on the sexually oriented business premises, nor may a
17 patron touch, or be allowed to touch, a nude or seminude employee
18 or the clothing of a nude or seminude employee, while the employee
19 is on the sexually oriented business premises.

20 **§61-8F-6. Preemption.**

21 Notwithstanding any provision in this article to the contrary,
22 local government bodies may enact additional regulations as they
23 consider necessary to eliminate, reduce or control the adverse
24 secondary effects caused by sexually oriented businesses within

1 their communities.

2 **§61-8F-7. Penalties for violation.**

3 Violation of the provisions of this article is a misdemeanor
4 punishable by a fine of not more than \$1,000. A fourth violation
5 of this article within a sixty-day period is a misdemeanor,
6 punishable by fine of up to \$10,000 or confinement in jail no more
7 than one year, or both fine and confinement.

NOTE: The purpose of this bill is to regulate sexually oriented businesses to promote the morals and general welfare of the citizens of the state.

This article is new; therefore, it has been completely underscored.