

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2821

FISCAL  
NOTE

2015 Carryover

(BY DELEGATES R. SMITH, BUTLER, WAGNER, ELDRIDGE,  
D. EVANS, MILLER, BORDER, LONGSTRETH AND CAPUTO)

[Introduced January 13, 2016; referred to the  
Committee on Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §60-4-24, relating to implementing a surcharge on licensed exotic  
 3 entertainment facilities and adult bookstores to provide funding for rape information and  
 4 prevention services and rape crisis centers; findings; reporting requirements; creating the  
 5 Sexual Assault Fund to End Rape; providing for the dispersal of grants for rape information  
 6 and prevention services and rape crisis centers; providing for rule-making; defining a term;  
 7 and providing for a civil penalty.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §60-4-24, to read as follows:

**ARTICLE 4. LICENSES.**

**§60-4-24. Exotic entertainment facility license and adult bookstore surcharge; Sexual Assault Fund to End Rape (SAFER) created; rules; penalty.**

1 (a) This section shall be known and may be cited as the Sexual Assault Fund to End Rape  
 2 (SAFER) Act.

3 (b) The Legislature finds and declares the following:

4 (1) The surcharge imposed by this measure is intended to ameliorate the negative  
 5 secondary effects associated with the combination of sexually oriented businesses such as  
 6 licensed exotic entertainment facilities and adult bookstores so as to promote the health, safety,  
 7 and welfare of the citizens of West Virginia.

8 (2) This section is not intended to directly or indirectly impose limitations or restrictions on  
 9 licensed exotic entertainment facilities or adult bookstores, nor is it the intent of this section to  
 10 restrict or deny access by adults to licensed exotic entertainment facilities performances or adult  
 11 bookstores that may be protected by the First Amendment to the United States Constitution or by

12 the West Virginia Constitution.

13 (c)(1) An annual surcharge of one percent is imposed upon all sales, as that term is  
14 defined in section three-a, article twenty-four, chapter eleven of this code, of an exotic  
15 entertainment facility operating in this state licensed pursuant to section twenty-three, article four  
16 of this chapter or an adult bookstore as defined in subdivision (2) of this subsection.

17 (2) For the purposes of this section "adult bookstore" means a commercial establishment  
18 that, as one of its principal business purposes, offers for sale or rental for any form of  
19 consideration any one or more of the following:

20 (A) Books, magazines, periodicals or other printed matter or photographs, films, motion  
21 picture, video cassettes or video reproductions, slides, or other visual representations that depict  
22 or describe "specified sexual activities" or "specified anatomical areas"; or

23 (B) Instruments, devices or paraphernalia that are designed for use in connection with  
24 "specified sexual activities". A commercial establishment may have other principal business  
25 purposes that do not involve the offering for sale or rental of material depicting or describing  
26 "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult book  
27 store" or "adult video store". These other business purposes will not serve to exempt such  
28 commercial establishments from being categorized as an adult bookstore or adult video store so  
29 long as one of its principal business purposes is the offering for sale or rental for consideration  
30 the specified materials that depict or describe "specified sexual activities" or "specified anatomical  
31 areas". A principal business purpose need not be a primary use of an establishment so long as  
32 it is a significant use based upon the visible inventory or commercial activity of the establishment.

33 (3) The person or entity operating the exotic entertainment facility or adult bookstore shall  
34 pay the surcharge to the state Tax Division.

35 (d) For each exotic entertainment facility or adult bookstore owing the surcharge as set

36 forth in subsection (c) of this section, the person or entity operating that exotic entertainment  
37 facility or adult bookstore must file a return as provided by the state Tax Division and remit  
38 payment to the division on an annual basis no later than January 20, covering the previous  
39 calendar year. Each return made to the division must state the following:

40 (1) The name of the person or entity operating the exotic entertainment facility or adult  
41 bookstore;

42 (2) The address of the exotic entertainment facility or adult bookstore and the address of  
43 the principal place of business (if that is a different address) of the person or entity operating the  
44 exotic entertainment facility or adult bookstore;

45 (3) The sales, as defined in section three-a, article twenty-four, chapter eleven of this  
46 code, of the exotic entertainment facilities and adult bookstores during the preceding calendar  
47 year; and

48 (4) The applicable surcharge to be paid by the person or entity operating the exotic  
49 entertainment facility or adult bookstore.

50 Notwithstanding any other provision of this subsection (d), if an exotic entertainment  
51 facility or adult bookstore ceases business operations, then the person or entity operating that  
52 facility must file a final return under this section with the state Tax Division not more than one  
53 calendar month after discontinuing business operations.

54 (e) Any person or entity operating an exotic entertainment facility or adult bookstore who  
55 fails to make a return or who makes a fraudulent return under this section shall be assessed a  
56 civil penalty equal to the amount of the surcharge owed under this section and an additional one  
57 hundred percent of the surcharge owed, all which shall be paid into the Sexual Assault Fund to  
58 End Rape (SAFER) created in subsection (h) of this section.

59 (f) Beginning January 1, 2016, the division shall pay all proceeds collected from the

60 surcharge imposed under this section into the Sexual Assault Fund to End Rape (SAFER), less  
61 two percent of those proceeds, which shall be paid to the West Virginia Violence and Injury  
62 Prevention Program in the Bureau for Public Health to cover the costs of administering the Sexual  
63 Assault Fund to End Rape (SAFER) as set forth in subsection (h) of this section.

64 (g) The Commissioner of the state Tax Division shall propose rules for legislative approval  
65 in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement  
66 the provisions of this section, except as to the administration of the Sexual Assault Fund to End  
67 Rape (SAFER) as set forth in subsection (h) of this section.

68 (h) The Sexual Assault Fund to End Rape (SAFER) is created as a special fund in the  
69 State Treasury. From appropriations from the fund, the West Virginia Violence and Injury  
70 Prevention Program in the Bureau for Public Health shall make SAFER grants available to the  
71 West Virginia Foundation for Rape Information and Services and to rape crisis centers in this  
72 state that are in coalition with or otherwise meet rape crisis center standards set forth by the West  
73 Virginia Foundation for Rape Information and Services. SAFER grants shall be made for the  
74 purpose of providing community based assistance to victims of sexual assault and for activities  
75 concerning the prevention of sexual assault. Moneys received for the purposes of this section,  
76 including, surcharge proceeds, civil penalties and other gifts, grants or awards from a public or  
77 private entity, shall be deposited into the fund. Any interest earnings that are attributable to  
78 moneys in the fund shall be deposited into the fund. The Commissioner of the Bureau for Public  
79 Health shall propose rules for legislative approval in accordance with the provisions of article  
80 three, chapter twenty-nine-a of this code to provide generally for administration of the Sexual  
81 Assault Fund to End Rape and to set criteria for dispersing grants as provided in this subsection.

NOTE: The purpose of this bill is to implement a surcharge on licensed exotic entertainment facilities and adult bookstores in this state to provide funding for rape information and prevention services and rape crisis centers in the state. The bill creates the Sexual Assault Fund to End Rape. The bill provides for the dispersal of grants for rape information and prevention services and rape crisis centers. The bill provides for rule-making, defines a term and provides for a civil penalty.

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