

SB 1010

FILED

2009 JUN 17 PM 4:32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

FIRST EXTRAORDINARY SESSION, 2009

ENROLLED

Senate Bill No. 1010

(BY SENATORS TOMBLIN (MR. PRESIDENT)
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed June 2, 2009; in effect from passage.]

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(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
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[Passed June 2, 2009; in effect from passage.]

AN ACT to amend and reenact §7-1-3jj of the Code of West Virginia, 1931, as amended, relating to ordinances; and providing certain county commissions with authority to regulate the location of businesses offering exotic entertainment.

Be it enacted by the Legislature of West Virginia:

That §7-1-3jj of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3jj. Authority of counties to enact ordinances restricting the location of businesses offering exotic entertainment.

1 (a) For the purposes of this section:

2 (1) "Exotic entertainment" means live entertainment,
3 dancing or other services conducted by persons while nude
4 or seminude in a commercial setting or for profit.

5 (2) "Seminude" means the appearance of:

6 (A) The female breast below a horizontal line across the
7 top of the areola at its highest point, including the entire
8 lower portion of the human female breast, but does not
9 include any portion of the cleavage of the human female
10 breast exhibited by a dress, blouse, skirt, leotard, bathing
11 suit or other wearing apparel provided the areola is not
12 exposed, in whole or in part;

13 (B) A human bare buttock, anus, anal cleft or cleavage,
14 pubic area, male genitals, female genitals or vulva, with
15 less than a fully opaque covering; or

16 (C) A human male genital in a discernibly turgid state
17 even if completely and opaquely covered.

18 (b) A county commission may, by order entered of
19 record, adopt an ordinance that limits the areas of the
20 county in which a business may offer "exotic entertain-
21 ment". However, an ordinance enacted pursuant to this
22 section may not affect a business offering exotic entertain-
23 ment prior to the effective date of the ordinance.

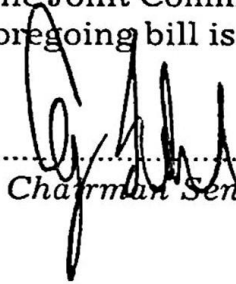
24 (c) The ordinance is subject to the provisions of section
25 ten, article seven, chapter eight-a of this code: *Provided,*
26 That in the event of the partial or total loss of any existing
27 business structure due to fire, flood, accident or any other
28 unforeseen act, that business structure may be repaired or
29 replaced and the business use of that structure may
30 continue notwithstanding the existence of any ordinance
31 authorized by this section. Any repair or replacement is
32 limited to restoring or replacing the damaged or lost
33 structure with one reasonably similar, or smaller, in size
34 as measured in square footage, and any enlargement of the

35 business structure subjects the structure to any existing
36 ordinance authorized by this section.

37 (d) Notwithstanding any other provision of this code to
38 the contrary, no ordinance enacted pursuant to the
39 provisions of this section applies to or affects any munici-
40 pal corporation that either: (1) Has adopted and has in
41 effect an ordinance restricting the location of exotic
42 entertainment or substantially similar businesses pursuant
43 to the authority granted in article twelve, chapter eight of
44 this code, or chapter eight-a of this code; or (2) adopts an
45 ordinance to exempt itself from any county ordinance
46 enacted pursuant to this section.

47 (e) Any person adversely affected by an ordinance
48 enacted pursuant to the authority granted in subsection (b)
49 of this section is entitled to seek direct judicial review
50 with regard to whether the ordinance impermissibly
51 burdens his or her right to establish a business offering
52 exotic entertainment.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



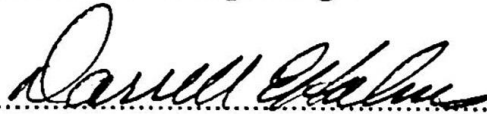
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Chairman Senate Committee



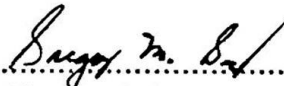
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Chairman House Committee

Originated in the Senate.

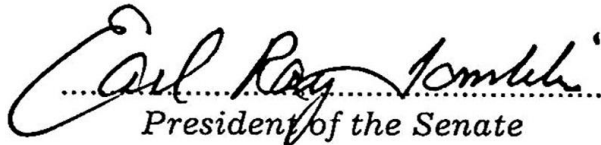
In effect from passage.



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Clerk of the Senate



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Clerk of the House of Delegates



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President of the Senate



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Speaker House of Delegates

The within..... is approved..... this the.....^{17th}
Day of..... June....., 2009.



.....
Governor

PRESENTED TO THE
GOVERNOR

JUN 16 2009

Time 9:00 am