WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3176

FISCAL
NOTE

By Delegates Thorne, Horst, Longanacre, A. Hall,

Dillon, DeVault, Howell and Kump

[Introduced January 31, 2023; Referred to the

Committee on Education then the Judiciary]

1 A BILL to amend and reenact §61-8A-3 of the Code of West Virginia, 1931, as amended; and to

2   amend said code by adding thereto a new section, designated §61-8A-6, all relating to

3   prohibiting drag shows from being performed in front of minors and to prohibit drags shows

4   in public places, such as schools and libraries.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

§61-8A-3. Exemptions from criminal liability.

1   The criminal provisions of section two of this article do not apply to:

2   (a) A bona fide school, in the presentation of local or state approved curriculum, except as

3 otherwise provided for in §61-8A-6 of this code;

4   (b) A public library, or museum, which is displaying or distributing any obscene matter to a

5 minor only when the minor was accompanied by his or her parent, except as otherwise provided

6 for in §61-8A-6 of this code;

7   (c) A licensed medical or mental health care provider, or judicial or law-enforcement officer,

8 during the course of medical, psychiatric, or psychological treatment or judicial or law-enforcement

9 activities;

10   (d) A person who did not know or have reason to know, and could not reasonably have

11 learned, that the person to whom the obscene matter was distributed or displayed was a minor and

12 who took reasonable measures to ascertain the identity and age of the minor, except as otherwise

13 provided for in §61-8A-6 of this code;

14   (e) A person who routinely distributes obscene matter by the use of telephone, computer

15 network or the Internet and who distributes such matter to any minor under the age of eighteen

16 years after the person has taken reasonable measures to prevent access by minors to the

17 obscene matter; or

18   (f) A radio or television station, cable television service or other telecommunications

19   service   regulated   by   the   federal   communications   commission.

§61-8A-6. Prohibition of drag shows to minors.

1   (a) *Definitions*. – The following definitions shall apply for purposes of this section:

2   (1) "Adult-oriented business" means an adult arcade, an adult bookstore or video store, an

3   adult cabaret, an adult live entertainment establishment, an adult motion picture theater, an adult

4   theater, a massage establishment that offers adult services, an escort agency, a nude model

5   studio, or a drag performance; and

6   (2) "Drag performance" means a performance:

7   (A) In which one or more performers has a gender identity that is different from the

8   performer's gender assigned at birth using clothing, makeup, or other accessories that are

9   traditionally worn by members of and are meant to exaggerate the gender identity of the

10   performer's opposite sex;

11   (B) Sings, lip-synchs, dances, or otherwise performs before an audience of at least two

12   persons for entertainment, whether performed for payment or not; and

13   (C) That is intended to appeal to the prurient interest.

14   (3) "Minor" means an individual who is less than 18 years of age.

15   (b) *Enactment of section*. – An adult-oriented business shall not be located or conduct

16   performances:

17   (1) On public property, such as at schools or at libraries; or

18   (2) Where a minor can view what the adult-oriented business is otherwise offering to the

19   public that qualifies it as an adult-oriented business.

20   (c) *Prohibition on state funding for drag shows*. – No state agency that receives state funds

21   shall use such funds to host a drag show.

NOTE: The purpose of this bill is to prohibit drag shows from being performed in front of

minors and to prohibit drags shows in schools and libraries.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.