WEST VIRGINIA CODE: §7-1-3JJ

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

(a) For the purposes of this section:

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

(2) "Seminude" means the appearance of:

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

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

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

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

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

(d) Notwithstanding any other provision of this code to the contrary, no ordinance enacted pursuant to the provisions of this section applies to or affects any municipal corporation that either: (1) Has adopted and has in effect an ordinance restricting the location of exotic entertainment or substantially similar businesses pursuant to the authority granted in article twelve, chapter eight of this code, or chapter eight-a of this code; or (2) adopts an ordinance

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to exempt itself from any county ordinance enacted pursuant to this section.

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

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