

SB104

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

Regular Session, 2002

**ENROLLED**

Committee Substitute for

**SENATE BILL NO. 104**

(By Senator Hunter, et al )

**PASSED February 15, 2002**

**In Effect ninety days from Passage**

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 104**

(SENATORS HUNTER, BOWMAN, ROSS, MINEAR AND HELMICK,  
*original sponsors*)

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[Passed February 15, 2002; in effect ninety days from passage.]

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AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ii; and to amend article twelve, chapter eight of said code by adding thereto a new section, designated section five-c, all relating to authorizing counties and municipalities to enact ordinances restricting the location of businesses offering exotic entertainment; defining terms; describing circumstances under which a county ordinance does not apply to a municipality; clarifying circumstances under which a loss of a structure used for an exotic entertainment business may be repaired or replaced; and permitting direct judicial review.

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

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ii; and that article twelve, chapter eight of said code be amended by adding thereto a new section, designated section five-c, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3ii. 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  
4 nude 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  
7 the top of the areola at its highest point, including the  
8 entire lower portion of the human female breast, but  
9 does not include any portion of the cleavage of the  
10 human female breast exhibited by a dress, blouse, skirt,  
11 leotard, bathing suit or other wearing apparel provided  
12 the areola is not 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) In the event a county has not created or designated  
19 a planning commission pursuant to the provisions of  
20 article twenty-four, chapter eight of this code, a county  
21 commission may, by order entered of record, adopt an  
22 ordinance that limits the areas of the county in which a

23 business may offer "exotic entertainment" as that term  
24 is defined in subsection (a) of this section. Any such  
25 ordinance shall be subject to the provisions of section  
26 fifty, article twenty-four, chapter eight of this code:  
27 *Provided*, That in the event of the partial or total loss of  
28 any existing business structure due to fire, flood, acci-  
29 dent or any other unforeseen act, that business structure  
30 may be repaired or replaced and the business use of that  
31 structure may continue notwithstanding the existence of  
32 any ordinance authorized by this section. Any such  
33 repair or replacement will be limited to restoring or  
34 replacing the damaged or lost structure with one reason-  
35 ably similar, or smaller, in size as measured in square  
36 footage, and any enlargement of the business structure  
37 will subject the structure to any existing ordinance  
38 authorized by this section. Notwithstanding any other  
39 provision of this code to the contrary, no ordinance  
40 enacted pursuant to the provisions of this section may  
41 apply to or affect any municipal corporation that either:  
42 (1) Has adopted and has in effect an ordinance restricting  
43 the location of exotic entertainment or substantially  
44 similar businesses pursuant to the authority granted in  
45 articles twelve or twenty-four, chapter eight of this code;  
46 or (2) adopts an ordinance to exempt itself from any  
47 county ordinance enacted pursuant to this section.

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

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOY- EES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-5c. Authority to enact ordinance restricting the location of businesses offering exotic entertainment.**

1 (a) For the purposes of this section, the term “exotic  
2 entertainment” has the same meaning ascribed to it in  
3 section three-ii, article one, chapter seven of this code.

4 (b) In the event a municipality has not created or  
5 designated a planning commission in accordance with  
6 the provisions of article twenty-four of this chapter,  
7 every municipality and the governing body of the munic-  
8 ipality may, in addition to all other powers of municipal-  
9 ities, adopt an ordinance that limits the areas of the  
10 municipality in which businesses may offer exotic  
11 entertainment. Any such ordinance shall be subject to  
12 the provisions of section fifty, article twenty-four of this  
13 chapter: *Provided*, That in the event of the partial or  
14 total loss of any existing business structure due to fire,  
15 flood, accident or any other unforeseen act, that business  
16 structure may be repaired or replaced and the business  
17 use of that structure may continue notwithstanding the  
18 existence of any ordinance authorized by this section.  
19 Any such repair or replacement will be limited to restor-  
20 ing or replacing the damaged or lost structure with one  
21 reasonably similar, or smaller, in size as measured in  
22 square footage, and any enlargement of the business  
23 structure will subject the structure to any existing  
24 ordinance authorized by this section.

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

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *27<sup>th</sup>* .....  
Day of *February* ....., 2002.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 8/2/02

Time 4:07 p