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
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.

(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.

(b) “Seminude” means the appearance of:

1. 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;

2. 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

3. A human male genital in a discernibly turgid state even if completely and opaque covered.

(b) In the event a county has not created or designated a planning commission pursuant to the provisions of article twenty-four, chapter eight of this code, 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" as that term
is defined in subsection (a) of this section. Any such
ordinance shall be subject to the provisions of section
fifty, article twenty-four, chapter eight of this code:
Provided, That in the event of the partial or total loss of
any existing business structure due to fire, flood, acci-
dent 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 such
repair or replacement will be limited to restoring or
replacing the damaged or lost structure with one reason-
ably similar, or smaller, in size as measured in square
footage, and any enlargement of the business structure
will subject the structure to any existing ordinance
authorized by this section. Notwithstanding any other
provision of this code to the contrary, no ordinance
enacted pursuant to the provisions of this section may
apply to or affect 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
articles twelve or twenty-four, chapter eight of this code;
or (2) adopts an ordinance to exempt itself from any
county ordinance enacted pursuant to this section.
(c) 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.

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.

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

(b) In the event a municipality has not created or designated a planning commission in accordance with the provisions of article twenty-four of this chapter, every municipality and the governing body of the municipality may, in addition to all other powers of municipalities, adopt an ordinance that limits the areas of the municipality in which businesses may offer exotic entertainment. Any such ordinance shall be subject to the provisions of section fifty, article twenty-four of this chapter: 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 such repair or replacement will be 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 will subject the structure to any existing ordinance authorized by this section.

(c) 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.
Commit

Bill is hereby certifies that the bill is enrolled.

Committee

Committee

Originated in the Senate.

ninety days from passage.

In effect-ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Presiding Officer of the Senate

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

Governor

Clerk of the Senate

Chairman, Senate Committee

Chairman, House Committee

Day of

Originated in the Senate.

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Day of
PRESENTED TO THE
GOVERNOR
Date: 2/16/02
Time: 4:07 PM