

Senate Bill No. 606

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(By Senators Barnes, Tucker, Beach, Cann, Cookman, Edgell, Green,
Laird, Miller, Palumbo, Sypolt, Plymale and Jenkins)

[Introduced February 17, 2014; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §60-4-24, relating to
implementing a surcharge on licensed exotic entertainment
facilities to provide funding for rape information and
prevention services and rape crisis centers; findings;
reporting requirements; Sexual Assault Fund to End Rape
created; dispersal of grants for rape information and
prevention services and rape crisis centers; rules; and civil
penalty.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §60-4-24, to read as
follows:

ARTICLE 4. LICENSES.

1 **§60-4-24. Exotic entertainment facility license surcharge; Sexual**
2 **Assault Fund to End Rape (SAFER) created; rules;**
3 **penalty.**

4 (a) This section shall be known and may be cited as the Sexual
5 Assault Fund to End Rape (SAFER) Act.

6 (b) The Legislature finds and declares the following:

7 (1) The surcharge imposed by this measure is intended to
8 ameliorate the negative secondary effects associated with the
9 combination of sexually oriented businesses such as licensed exotic
10 entertainment facilities and alcohol so as to promote the health,
11 safety, and welfare of the citizens of West Virginia.

12 (2) This section is not intended to directly or indirectly
13 impose limitations or restrictions on licensed exotic entertainment
14 facilities, nor is it the intent of this section to restrict or
15 deny access by adults to licensed exotic entertainment facilities
16 performances that may be protected by the First Amendment to the
17 United States Constitution or by the West Virginia Constitution.

18 (c) An annual surcharge is imposed upon any exotic
19 entertainment facility operating in this state licensed pursuant to
20 section twenty-three, article four of this chapter. The person or
21 entity operating the exotic entertainment facility shall pay the
22 surcharge to the State Tax Division as follows:

23 (A) If the exotic entertainment facility's sales, as defined
24 in subdivision (33), section three-a, article twenty-four, chapter

1 eleven of this code, during the preceding calendar year are equal
2 or greater than \$2,000,000, then the person or entity operating the
3 exotic entertainment facility shall pay the state Tax Division a
4 surcharge of \$25,000.

5 (B) If the exotic entertainment facility's sales, as defined
6 in subdivision (33), section three-a, article twenty-four, chapter
7 eleven of this code, during the preceding calendar year are equal
8 to or greater than \$500,000 but less than \$2,000,000, then the
9 person or entity operating the exotic entertainment facility shall
10 pay the State Tax Division a surcharge of \$15,000.

11 (C) If the exotic entertainment facility's sales, as defined
12 in subdivision (33), section three-a, article twenty-four, chapter
13 eleven of this code, during the preceding calendar year are less
14 than \$500,000, then the person or entity operating the exotic
15 entertainment facility shall pay the State Tax Division a surcharge
16 of \$5,000.

17 (d) For each exotic entertainment facility owing the surcharge
18 as set forth in item subsection (c) of this section, the person or
19 entity operating that exotic entertainment facility must file a
20 return as provided by the State Tax Division and remit payment to
21 the division on an annual basis no later than January 20 covering
22 the previous calendar year. Each return made to the division must
23 state the following:

24 (1) The name of the person or entity operating the exotic

1 entertainment facility;

2 (2) The address of the exotic entertainment facility and the
3 address of the principal place of business (if that is a different
4 address) of the person or entity operating the exotic entertainment
5 facility;

6 (3) The exotic entertainment facility's sales, as defined in
7 subdivision (33), section three-a, article twenty-four, chapter
8 eleven of this code, during the preceding calendar year; and

9 (4) The applicable surcharge to be paid by the person or
10 entity operating the exotic entertainment facility.

11 Notwithstanding any other provision of this subsection (d), if
12 an exotic entertainment facility ceases business operations, then
13 the person or entity operating that facility must file a final
14 return under this section with the State Tax Division not more than
15 one calendar month after discontinuing business operations.

16 (e) Any person or entity operating an exotic entertainment
17 facility who fails to make a return or who makes a fraudulent
18 return under this section shall be assessed a civil penalty equal
19 to the amount of the surcharge owed under this section and an
20 additional one hundred percent of the surcharge owed, all which
21 shall be paid into the Sexual Assault Fund to End Rape (SAFER)
22 created in subsection (h).

23 (f) Beginning January 1, 2015, the division shall pay all
24 proceeds collected from the surcharge imposed under this section

1 into the Sexual Assault Fund to End Rape (SAFER), less two percent
2 of those proceeds, which shall be paid to the West Virginia
3 Violence and Injury Prevention Program in the Bureau for Public
4 Health to cover the costs of administering the Sexual Assault Fund
5 to End Rape (SAFER) as set forth in subsection (h).

6 (g) The Commissioner of the State Tax Division shall propose
7 rules for legislative approval in accordance with the provisions of
8 article three, chapter twenty-nine-a of this code to implement the
9 provisions of this section, except as to the administration of the
10 Sexual Assault Fund to End Rape (SAFER) as set forth in subsection
11 (h).

12 (h) The Sexual Assault Fund to End Rape (SAFER) is created as
13 a special fund in the State Treasury. From appropriations from the
14 fund, the West Virginia Violence and Injury Prevention Program in
15 the Bureau for Public Health shall make SAFER grants available to
16 the West Virginia Foundation for Rape Information and Services and
17 to rape crisis centers in this state that are in coalition with or
18 otherwise meet rape crisis center standards set forth by the West
19 Virginia Foundation for Rape Information and Services. SAFER grants
20 shall be made for the purpose of providing community based
21 assistance to victims of sexual assault and for activities
22 concerning the prevention of sexual assault. Moneys received for
23 the purposes of this section, including, surcharge proceeds, civil
24 penalties and other gifts, grants or awards from a public or

1 private entity, shall be deposited into the fund. Any interest
2 earnings that are attributable to moneys in the fund shall be
3 deposited into the fund. The Commissioner of the Bureau for Public
4 Health shall propose rules for legislative approval in accordance
5 with the provisions of article three, chapter twenty-nine-a of this
6 code to provide generally for administration of the Sexual Assault
7 Fund to End Rape and to set criteria for dispersing grants as
8 provided in this subsection.

NOTE: The purpose of this bill is to implement a surcharge on licensed exotic entertainment facilities in this state to provide funding for rape information and prevention services and rape crisis centers in the state.

This section is new; therefore, strike-throughs and underscoring have been omitted.