

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2919

By Delegates Chiarelli, Dillon, Keaton, Pinson,
Jeffries, W. Hall, McGeehan and Brooks

[Introduced January 23, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §61-8G-1, §61-8G-2, §61-8G-3, §61-8G-4, §61-8G-5, and §61-8G-6, all
 3 relating to creating the Sexually Oriented Businesses Regulation Act to prohibit adult video
 4 stores and adult arcades; providing for legislative findings; providing for definitions;
 5 prohibiting adult video stores and adult arcades from physical operation within the state;
 6 providing for preemption; and providing for violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8G. PROHIBTING ADULT VIDEO STORES AND ADULT ARCADES.

§61-8G-1. Short title.

1 This article shall be known and may be cited as the "Sexually Oriented Businesses
 2 Regulation Act."

§61-8G-2. Legislative findings.

1 The Legislature finds and declares as follows:

2 (a) Crime statistics show that all types of crimes, especially sex-related crimes, occur with
 3 more frequency in neighborhoods where adult video and adult arcade businesses are located.

4 (b) Adult establishments encourage prostitution, increase sexual assaults and attract other
 5 criminal activity.

6 (c) Persons frequent certain adult theaters, adult arcades, and other sexually oriented
 7 businesses for the purpose of engaging in sex within the premises of such sexually oriented
 8 businesses.

9 (d) It is desirable to reduce the incidences of crime, disease and public sexual acts that
 10 occur in and around sexually oriented businesses.

11 (e) It is the purpose of this article to regulate the operation of sexually oriented businesses
 12 in order to promote the health, safety, morals and general welfare of the citizens of this state.

§61-8G-3. Definitions.

1 (a) "Adult arcade" means any place to which the public is permitted or invited wherein coin-

2 operated or slug-operated or electronically, electrically or mechanically controlled still or motion
3 picture machines, projectors or other image-producing devices are maintained to show images to
4 five or fewer persons per machine at any one time, and where the images so displayed are
5 distinguished or characterized by the depicting or describing of "specified sexual activities" or
6 "specified anatomical areas."

7 (b) "Adult bookstore" or "adult video store" means a commercial establishment that, as one
8 of its principal business purposes, offers for sale or rental for any form of consideration any one or
9 more of the following:

10 (1) Books, magazines, periodicals or other printed matter or photographs, films, motion
11 picture, video cassettes or video reproductions, slides or other visual representations that depict
12 or describe "specified sexual activities" or "specified anatomical areas"; or

13 (2) Instruments, devices or paraphernalia that are designed for use in connection with
14 "specified sexual activities."

15 (3) A commercial establishment may have other principal business purposes that do not
16 involve the offering for sale or rental of material depicting or describing "specified sexual activities"
17 or "specified anatomical areas" and still be categorized as "adult book store" or "adult video store."
18 These other business purposes will not serve to exempt such commercial establishments from
19 being categorized as an adult bookstore or adult video store so long as one of its principal
20 business purposes is the offering for sale or rental for consideration the specified materials that
21 depict or describe "specified sexual activities" or "specified anatomical areas." A principal
22 business purpose need not be a primary use of an establishment so long as it is a significant use
23 based upon the visible inventory or commercial activity of the establishment.

24 (c) "Adult cabaret" means a club, nightclub, bar, restaurant or similar commercial
25 establishment that regularly features:

26 (1) Persons who appear in a state of nudity or seminudity; or

27 (2) Live performances that are characterized by the exposure of "specified anatomical

28 areas" or by "specified sexual activities"; or

29 (3) Films, motion pictures, video cassettes, slides or other photographic reproductions that
30 are characterized by the depiction or description of "specified sexual activities"; or "specified
31 anatomical areas"; or

32 (4) Persons who engage in erotic dancing or performances that are intended for the sexual
33 interests or titillation of an audience or customers.

34 (d) "Adult motion picture theater" means a commercial establishment where, for any form
35 of consideration, films, motion pictures, video cassettes, slides or similar photographic
36 reproductions are regularly shown that are characterized by the depiction or description of
37 "specified sexual activities" or "specified anatomical areas."

38 (e) "Adult theater" means a theater, concert hall, Auditorium or similar commercial
39 establishment that regularly features persons who appear, in person, in a state of nudity and/or
40 seminudity, and/or live performances that are characterized by the exposure of "specified
41 anatomical areas" or by "specified sexual activities."

42 (f) "Hours of operation" means the period of day a sexually oriented business may offer for
43 use, view, rent, sale or consumption, entertainment, beverages or other types of products or
44 services.

45 (g) "Live theatrical performance" means a play, opera, ballet, concert or musical drama.

46 (h) "Nude model studio" means any place where a person who appears in a state of nudity
47 or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted,
48 sculptured, photographed or similarly depicted by other persons for consideration.

49 (i) "Nudity" or a "state of nudity" means the appearance of a human bare buttock, anus,
50 anal cleft or cleavage, pubic area, male genitals, female genitals or vulva, with less than a fully
51 opaque covering; or a female breast with less than a fully opaque covering of any part of the
52 areola; or human male genitals in a discernibly turgid state even if completely and opaquely
53 covered.

54 (j) "Seminude or seminudity" means the appearance of the female breast below a
55 horizontal line across the top of the areola at its highest point. This definition shall include the
56 entire lower portion of the human female breast, but shall not include any portion of the cleavage of
57 the human female breast exhibited by a dress, blouse, skirt or leotard.

58 (k) "Sexual encounter center" means a business or commercial enterprise that, as one of
59 its principal business purposes, offers for any form of consideration:

60 (1) Physical contact in the form of wrestling or tumbling between persons of the opposite
61 sex; or

62 (2) Activities between male and female persons and/or persons of the same sex when one
63 or more of the persons is in a state of nudity or seminudity.

64 (l) "Sexually oriented business" means an adult arcade, adult bookstore or adult video
65 store, adult cabaret, adult motion picture theater, adult theater, nude model studio or sexual
66 encounter center.

67 (m) "Specified anatomical areas" means:

68 (1) The human male genitals in a discernibly turgid state, even if fully and opaquely
69 covered;

70 (2) Less than completely and opaquely covered human genitals, pubic region, buttocks or
71 a female breast below a point immediately above the top of the areola.

72 (3) Notwithstanding any other provision in this article, movies rated G, PG, PG-13 or R by
73 the Motion Picture Association of America (MPAA), or live theatrical performances with serious
74 artistic, social or political value, that depict or describe specified anatomical areas, are expressly
75 exempted from the provisions of this ordinance.

76 (n) "Specified sexual activities" means and includes any of the following:

77 (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or
78 female breasts, whether covered or uncovered;

79 (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral

80 copulation or sodomy;

81 (3) Masturbation, actual or simulated; or

82 (4) Excretory functions as part of or in connection with any of the activities set forth in (1)
83 through (3) above.

84 (5) Notwithstanding any other provision in this chapter, movies rated G, PG, PG-13, or R by
85 the Motion Picture Association of America (MPAA), or live theatrical performances with serious
86 artistic, social or political value, that depict or describe specified sexual activities, are expressly
87 exempted from the provisions of this ordinance.

§61-8G-4. Adult video stores and adult arcades prohibited.

1 All sexually oriented businesses, adult bookstores, adult video stores, or adult arcades, as
2 defined in section three of this article, are hereby prohibited from operating a physical location in
3 this state.

§61-8G-5. Preemption.

1 Notwithstanding any provision in this article to the contrary, local government bodies may
2 enact additional regulations as they consider necessary to eliminate, reduce or control the
3 adverse secondary effects caused by sexually oriented businesses, adult bookstores, adult video
4 stores, or adult arcades within their communities.

§61-8G-6. Penalties.

1 Violation of the provisions of this article is a misdemeanor punishable by a fine of not more
2 than \$1,000. A fourth violation of this article within a sixty-day period is a misdemeanor, punishable
3 by fine of up to \$10,000 or confinement in jail no more than one year, or both fine and confinement.

NOTE: The purpose of this bill is to create the Sexually Oriented Businesses Regulation Act. The bill prohibits adult video stores and adult arcades. The bill provides for legislative findings. The bill provides for definitions. The bill prohibits adult video stores and adult arcades from physical operation within the state. The bill provides for preemption. Finally, the bill provides for violations.

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