

Senate Bill No. 438

(By Senators Palumbo, Gaunch, Kessler, Miller, Sypolt, Plymale, Laird, Prezioso, Walters and
Stollings)

[Introduced February 9, 2015; referred 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 and adult bookstores to provide funding for rape information and prevention services and rape crisis centers; findings; reporting requirements; creating Sexual Assault Fund to End Rape; providing for dispersal of grants for rape information and prevention services and rape crisis centers; providing for rulemaking; defining a term; and providing for a 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.

§60-4-24. Exotic entertainment facility license and adult bookstore surcharge; Sexual Assault

1 **Fund to End Rape (SAFER) created; rules; penalty.**

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

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

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

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

14 (c)(1) An annual surcharge of one percent is imposed upon all sales, as that term is defined
15 in section three-a, article twenty-four, chapter eleven of this code, of an exotic entertainment facility
16 operating in this state licensed pursuant to section twenty-three, article four of this chapter or an
17 adult bookstore as defined in subdivision (2) of this subsection.

18 (2) For the purposes of this section "adult bookstore" means a commercial establishment that,
19 as one of its principal business purposes, offers for sale or rental for any form of consideration any
20 one or more of the following:

21 (A) Books, magazines, periodicals or other printed matter or photographs, films, motion

1 picture, video cassettes or video reproductions, slides, or other visual representations that depict or
2 describe "specified sexual activities" or "specified anatomical areas"; or

3 (B) Instruments, devices or paraphernalia that are designed for use in connection with
4 "specified sexual activities." A commercial establishment may have other principal business
5 purposes that do not involve the offering for sale or rental of material depicting or describing
6 "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult book
7 store" or "adult video store." These other business purposes will not serve to exempt such
8 commercial establishments from being categorized as an adult bookstore or adult video store so long
9 as one of its principal business purposes is the offering for sale or rental for consideration the
10 specified materials that depict or describe "specified sexual activities" or "specified anatomical
11 areas." A principal business purpose need not be a primary use of an establishment so long as it is
12 a significant use based upon the visible inventory or commercial activity of the establishment.

13 (3) The person or entity operating the exotic entertainment facility or adult bookstore shall
14 pay the surcharge to the state Tax Division.

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

20 (1) The name of the person or entity operating the exotic entertainment facility or adult
21 bookstore;

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

4 (3) The sales, as defined in section three-a, article twenty-four, chapter eleven of this code,
5 of the exotic entertainment facilities and adult bookstores during the preceding calendar year; and

6 (4) The applicable surcharge to be paid by the person or entity operating the exotic
7 entertainment facility or adult bookstore.

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

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

17 (f) Beginning January 1, 2016, the division shall pay all proceeds collected from the
18 surcharge imposed under this section into the Sexual Assault Fund to End Rape (SAFER), less two
19 percent of those proceeds, which shall be paid to the West Virginia Violence and Injury Prevention
20 Program in the Bureau for Public Health to cover the costs of administering the Sexual Assault Fund
21 to End Rape (SAFER) as set forth in subsection (h) of this section.

1 (g) The Commissioner of the state Tax Division shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement
3 the provisions of this section, except as to the administration of the Sexual Assault Fund to End Rape
4 (SAFER) as set forth in subsection (h) of this section.

5 (h) The Sexual Assault Fund to End Rape (SAFER) is created as a special fund in the State
6 Treasury. From appropriations from the fund, the West Virginia Violence and Injury Prevention
7 Program in the Bureau for Public Health shall make SAFER grants available to the West Virginia
8 Foundation for Rape Information and Services and to rape crisis centers in this state that are in
9 coalition with or otherwise meet rape crisis center standards set forth by the West Virginia
10 Foundation for Rape Information and Services. SAFER grants shall be made for the purpose of
11 providing community based assistance to victims of sexual assault and for activities concerning the
12 prevention of sexual assault. Moneys received for the purposes of this section, including, surcharge
13 proceeds, civil penalties and other gifts, grants or awards from a public or private entity, shall be
14 deposited into the fund. Any interest earnings that are attributable to moneys in the fund shall be
15 deposited into the fund. The Commissioner of the Bureau for Public Health shall propose rules for
16 legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this
17 code to provide generally for administration of the Sexual Assault Fund to End Rape and to set
18 criteria for dispersing grants as provided in this subsection.

NOTE: The purpose of this bill is to implement a surcharge on licensed exotic entertainment facilities and adult bookstores in this state to provide funding for rape information and prevention services and rape crisis centers in the state. The bill creates the Sexual Assault Fund to End Rape. The bill provides for the dispersal of grants for rape information and prevention services and rape crisis centers. The bill provides for rule-making, defines a term and provides for a civil penalty.

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