

CHAPTER NO. 943

HOUSE BILL NO. 3043

By Representative Fowlkes

Substituted for: Senate Bill No. 3451

By Senators Jackson, Burks, Finney

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 51, Part 11, relative to Adult-Oriented Establishment Registration Act of 1998".

WHEREAS, the Legislature enacted the "Adult-Oriented Establishment Registration Act of 1998," as set forth in its Preamble and Legislative History, as a reasonable time, place and manner regulation to attempt to address some recognized deleterious secondary effects on the community commonly associated with adult-oriented establishments, including but not limited to an increase in crime, the spread of sexually-transmitted diseases, the downgrading of property values, and other public health, safety, and welfare issues; and

WHEREAS, it is the intent of this legislature to regulate adult-oriented establishments, operators, employees, entertainers, and escorts in a constitutionally permissible manner to attempt to address these deleterious secondary effects; and

WHEREAS, most provisions of the Adult-Oriented Establishment Registration Act of 1998 have been upheld by state and federal courts as constitutionally permissible regulations of adult-oriented establishments, operators, employees, entertainers, and escorts that are reasonable attempts to address these deleterious secondary effects, (including specifically in judicial findings in American Show Bar Series, Inc. v. Sullivan County, 30 S.W.3d 324 (Tenn. App. 2000), perm. app. denied; Odle, d/b/a Sports Club, Inc. v. Decatur County, No. 02-1278 (W. D. Tenn., Oct. 14, 2003)(United States District Court Chief Judge Todd), aff'm in pertinent part, 421 F.3d 386 (6th Cir. 2005); and (companion cases) Paul Friedman, et al v. Giles County Adult-Oriented Establishment Board, et al, No. 1-00-0065 (M. D. Tenn., September 29, 2005)(United States District Judge Higgins) and Angela Kaye Belew, et al v. Giles County Adult-Oriented Establishment Board, et al, No. 1-01-0139 (M. D. Tenn., September 29, 2005) (United States District Judge Higgins)(limited injunctive relief ordered)); and

WHEREAS, it is the intent of the general assembly to address some concerns related to the above referenced federal court litigation in the Middle District of Tennessee regarding the validity, scope, meaning, and effect of certain sections, clauses, or provisions of the Adult-Oriented Establishment Registration Act of 1998;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-51-1102(3), is amended by deleting "significant or substantial portion" from the first sentence and replacing that language with "principal or predominant theme, emphasis, or portion".

SECTION 2. Tennessee Code Annotated, Section 7-51-1102(9), is amended by deleting the semicolon at the end of such subdivision and adding the following language:

. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does it include an independent accountant, attorney, or other similar professional incidentally visiting the premises solely to perform accounting, legal or other similar professional services, provided that accountant, attorney or other similar professional is not a manager, owner, operator, entertainer, or escort connected with the adult-oriented establishment or the providing of adult entertainment;

SECTION 3. Tennessee Code Annotated, Section 7-51-1104(e), is amended by deleting the second sentence and substituting the following language:

All existing adult-oriented establishments, entertainers, employees, escorts, or operators, at the time this part is given local effect pursuant to section 7-51-1120, who timely submit an application for an appropriate license or permit as set forth in this subsection shall be granted a conditional license or permit maintaining the status quo pending final judicial review by the trial court. If no timely application is filed within the one hundred twenty day (120) period or no license or permit is issued by the board or granted through judicial review by the trial court, then the adult-oriented establishment, entertainer, employee, escort, or operator shall cease to operate or to perform such services or entertainment.

SECTION 4. Tennessee Code Annotated, Section 7-51-1109(a), is amended to add "or permit" in the introductory sentence after "revoke, suspend or annul a license".

SECTION 5. Tennessee Code Annotated, Section 7-51-1109(a)(2), is amended by deleting the present language and substituting the following language:

The operator, entertainer, employee, or any escort violates any provision of this part; provided that an operator has a duty to supervise conduct on the premises of the adult-oriented establishment and shall be deemed responsible for the conduct of an entertainer, employee, or escort, if the operator knew or should have known of the violation and authorized, approved, or in the exercise of due diligence failed to take reasonable efforts to prevent the violation;

SECTION 6. Tennessee Code Annotated, Section 7-51-1109(a)(3), is amended by deleting the present language and substituting the following language:

The operator, entertainer, employee, or escort becomes ineligible to obtain the appropriate license or permit;

SECTION 7. Tennessee Code Annotated, Section 7-51-1109(a)(5), is amended by deleting the present language and substituting the following language:

Any intoxicating liquor or malt beverage is served or consumed on the premises of the adult-oriented establishment, when an operator, employee, entertainer, or escort knew or should have known of the violation and authorized, approved, or, in the exercise of due diligence, failed to take reasonable efforts to prevent this violation;

SECTION 8. Tennessee Code Annotated, Section 7-51-1109(a)(6), is amended by deleting the present language and substituting the following language:

An operator who, with actual or constructive knowledge, employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit;

SECTION 9. Tennessee Code Annotated, Section 7-51-1109(a)(9), is amended by deleting the present language and substituting the following language:

An operator, who with actual or constructive knowledge, fails to maintain the licensed premises in a sanitary condition by allowing continuing violations of the published health code, rules, or regulations specifically applicable in that jurisdiction, based upon an inspection by the appropriate health authority for that jurisdiction;

SECTION 10. Tennessee Code Annotated, Section 7-51-1110(b), is amended by adding the following language after the first sentence:

All adult-oriented establishments, entertainers, employees, escorts, or operators who timely submit an application for renewal of an appropriate license or permit shall be granted a conditional license or permit maintaining the status quo pending review by the board and final judicial review by the trial court.

SECTION 11. Tennessee Code Annotated, Section 7-51-1113(a), is amended by deleting the first sentence and substituting the following language:

The operator shall maintain a register of all employees, entertainers, or escorts, showing for each person the name, permit number issued under this part, any aliases used, home address, age,

birth date, sex, height, weight, color of hair and eyes, telephone number, social security number, driver license number, date of employment and termination, and duties associated with the adult-oriented establishment.

SECTION 12. Tennessee Code Annotated, Section 7-51-1113(i), is amended by deleting the existing language and substituting the following language:

The permit shall be kept by an employee, entertainer, or escort so that it is readily available for display immediately upon request of any member of such county sheriffs department or other appropriate law enforcement official, any board member, or any person designated by the board to assist it in enforcing this part. Each employee, entertainer, or escort shall immediately display or disclose his or her valid permit number to any customer upon request.

SECTION 13. Tennessee Code Annotated, Section 7-51-1113(d), is amended by deleting the present language and substituting the following language:

An operator shall be responsible for supervising the conduct of all entertainers and employees while on the licensed premises, and shall exercise due diligence in taking reasonable efforts to prevent acts or omissions of any entertainers or employees constituting a violation of the provisions of this part, with the operator's failure to reasonably fulfill this duty constituting a ground for determining whether the operator's license shall be revoked, suspended or renewed.

SECTION 14. Tennessee Code Annotated, Section 7-51-1116(a), is amended by adding "as an entertainer, employee, or escort" in the first sentence after the word "permit".

SECTION 15. Tennessee Code Annotated, Section 7-51-1116(d), is amended by deleting the present language and substituting the following language:

If an additional investigation is held that is not caused by actions of the applicant, upon the expiration of the 30th day from the filing of the application, the applicant shall be permitted conditionally to work as an entertainer, employee, or escort pending final judicial review by the trial court of a decision by the board to deny the application.

SECTION 16. Tennessee Code Annotated, Section 7-51-1117(a), is amended to add ", employee" in the introductory sentence after "permit as an entertainer".

SECTION 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 18. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 25, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 20th day of June 2006


PHIL BREDESEN, GOVERNOR