

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1050
Economic Matters

(Delegates Barkley and Davis)

Education, Health, and Environmental Affairs

Alcoholic Beverages Licensees - Adult Entertainment - Exception

This bill specifies that prohibitions against nudity and sexual displays in specified jurisdictions applicable to alcoholic beverages licensees allowing entertainment do not apply to licensees who are operators of theaters, art centers, or similar establishments that present performances expressing matters of serious literary, artistic, scientific, or political value. The bill alters the references to prohibited entertainment and the definition of the term “adult entertainment” so as to remove references to touching.

The bill also terminates an exemption granted by Chapter 262 of 2005 for alcoholic beverages license holders from a prohibition against adult entertainment activity in Prince George’s County.

Fiscal Summary

State Effect: This bill may protect the State from litigation, and orders to pay plaintiffs’ attorneys fees in the future. Such an inevitability cannot be readily predicted or quantified.

Local Effect: Minimal. However, the bill may clarify the responsibilities of the Board of License Commissioners in Prince George’s County and similar boards, statewide.

Small Business Effect: None. However, the bill may prevent a perceived need of some businesses providing adult entertainment from filing future lawsuits directed at county licensing boards.

Analysis

Current Law/Background: Under provisions of the Alcoholic Beverages Article relating to nudity and sexual displays, restrictions are placed on certain types of conduct – including completely nude entertainment, certain types of sexual touching, and certain actual or simulated sexual displays – in establishments holding alcoholic beverages licenses in specified Maryland counties, including Prince George’s County. The term “adult entertainment” is defined under these same provisions.

Chapter 262 of 2005 added Prince George’s County to the list of jurisdictions which prohibit nudity and sexual displays in establishments with alcoholic beverages licenses. Under the Act, a violator’s alcoholic beverages license must be revoked by the Prince George’s County Board of License Commissioners. The Act also specifically exempted license holders that already conducted such activity if they received permission from the board to do so on or before August 15, 1981, and had continuously owned the premises since September 1, 1981.

In the recently decided U.S. District Court for the District of Maryland case of *Legend Night Club v. Prince George’s County Board of License Commissioners*, Civ.A.No.MJG-05-2138 (D.Md.), originally filed in 2005, plaintiff challenged the validity of the prohibitions on first amendment grounds. Perhaps due to challenges to similar laws in other states in the Fourth Circuit Court of Appeals, the District Court stayed the case for nearly two years to await a possible “carve-out” enactment by the General Assembly similar to the one provided under this bill. Because no such enactment occurred during that two-year period, the court released a finding that the law was unconstitutional on its face and enjoined enforcement in Prince George’s County. The Fourth Circuit has affirmed that ruling which limited its application to Prince George’s County. The State was ordered to pay \$90,000 in attorneys’ fees to the plaintiff’s lawyer.

The Maryland Attorney General advises that, in the absence of changes to the statute to address the issues raised by the court, the State could be subject to future challenges, including potential claims for attorneys’ fees, in other Maryland jurisdictions, or statewide.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller’s Office, Department of Legislative Services

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ncs/hlb

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