

HOUSE BILL 1139

By Hardaway

AN ACT to amend Tennessee Code Annotated, Title 7,  
relative to adult-oriented establishments and adult  
cabarets.

WHEREAS, the general assembly enacted the "Adult-Oriented Establishment Registration Act of 1998," codified as Title 7, Chapter 51, Part 11, 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 general assembly to regulate adult-oriented establishments, adult cabarets, and employees and entertainers of adult-oriented establishments and adult cabarets 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 apply to adult-oriented establishments and adult cabarets and employees and entertainers of such establishments and cabarets on a state-wide basis, regulations concerning hours of operation, prohibited acts, and permitting requirements which currently apply on a local basis to adult-oriented establishments under the Adult-Oriented Establishment Registration Act; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Section 7-51-1405, is amended by deleting the language “adult cabaret,”.

SECTION 2. Tennessee Code Annotated, Section 7-51-1402(a), is amended by inserting the language “or adult cabaret” between the language “establishment” and the language “shall” wherever such language appears.

SECTION 3. Tennessee Code Annotated, Section 7-51-1402(b), is amended by inserting the language “or adult cabarets” between the language “adult-oriented establishments” and the words “that are”.

SECTION 4. Tennessee Code Annotated, Section 7-51-1401, is amended by adding the following language as a new, appropriately designated subdivision:

( ) “Board” means an adult-oriented establishment board if such a board exists in a county or municipality. If there is no adult-oriented establishment board in a county, either the beer board, or a massage registration board appointed by the county mayor if such a board exists in the county, shall be substituted by the county legislative body for the adult-oriented establishment board as used in this part. If there is no adult-oriented establishment board in a municipality created either by ordinance, private act or in its

charter, the beer board of the municipality shall be substituted by the legislative body of the municipality for the adult-oriented establishment board as used in this part. If neither an adult-oriented establishment board nor a municipal beer board exists in a municipality, then the beer board of the county in which the municipality is located shall perform the functions for the municipality required for the board as used in this part.

( )

(A) "Employee" means a person who performs any service on the premises of an adult-oriented establishment or adult cabaret on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and whether or not such person is paid a salary, wage, or other compensation by the operator of such business;

(B) "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 the accountant, attorney or other similar professional is not a manager, owner, operator, entertainer, or escort connected with the adult-oriented establishment or adult cabaret or the providing of adult entertainment;

( ) "Entertainer" means any person who provides adult entertainment within an adult-oriented establishment or adult cabaret, whether or not a fee is charged or accepted for such entertainment and whether or not adult entertainment is provided as an employee.

SECTION 5. Tennessee Code Annotated, Title 7, Chapter 51, Part 14, is amended by adding Sections 6 through 13 of this act as new, appropriately designated sections:

SECTION 6.

(a) No operator, entertainer or employee of an adult-oriented establishment or adult cabaret, either on the premises or in relation to the person's role as an operator, entertainer, or employee of an adult-oriented establishment or adult cabaret, shall permit to be performed, offer to perform, perform, or allow customers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

(b) No operator, entertainer or employee of an adult-oriented establishment or adult cabaret shall encourage or permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any operator, entertainer or employee.

(c) No entertainer, employee, or customer of an adult-oriented establishment or adult cabaret shall be permitted to have any physical contact with any other entertainer, employee or customer on the premises during any performance and all performances shall only occur upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest entertainer, employee, or customer.

(d)

(1) No employee or entertainer, while on the premises of an adult-oriented establishment or adult cabaret, may:

- (A) Engage in sexual intercourse;
- (B) Engage in deviant sexual conduct;
- (C) Appear in a state of nudity; or
- (D) Fondle such person's own genitals or those of another.

(2) For the purpose of this section, "nudity" means the showing of the human male or female genitals or pubic area with less than a fully opaque

covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.

#### SECTION 7.

(a) Each employee or entertainer of an adult-oriented establishment or adult cabaret must first obtain a permit from the board prior to becoming an employee or entertainer in such establishments or cabarets and must meet the standards established in Section 8. Any person desiring to secure a permit as an entertainer or employee shall make application to the board. The application shall be filed in such number as the board may require, or in triplicate if no number is specified, and be dated by the board. The applicant shall submit a fee in an amount established by the board with the application.

(b) The application for a permit shall be upon a form provided by the board. An applicant for a permit shall furnish the following information under oath:

- (1) Name and address, including all aliases;
- (2) Written proof that the individual is at least eighteen (18) years of age;
- (3) The applicant's height, weight, color of eyes and hair;
- (4) The adult-oriented establishment, adult cabaret, or similar business permit history of the applicant; whether such person, in previously working as an employee or performing as an entertainer of an adult-oriented establishment or adult cabaret in this or any other city or state under such a permit, has had such permit revoked or suspended, the reason for the revocation or suspension, and the business activity or occupation subject to such action of suspension or revocation;
- (5) Any conviction for or plea of nolo contendere to a "specified criminal act" as defined in § 7-51-1102;

(6) Two (2) portrait photographs at least two inches by two inches (2" x 2") of the applicant; and

(7) A statement by the applicant that the applicant is familiar with the provisions of this part and is in compliance with the provisions of this part.

(c) Within ten (10) days of receiving the results of the investigation conducted by the board, the board shall notify the applicant that the applicant's application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the board shall advise the applicant in writing whether the application is granted or denied.

(d) If an additional investigation is held that is not caused by actions of the applicant, upon the expiration of the thirtieth day from the filing of the application, the applicant shall be permitted conditionally to work as an entertainer or employee until the later to occur of the expiration of the time in which to appeal the denial of a permit or, if an appeal of a denial is made, pending final judgment by the trial court on a decision by the board to deny the application.

(e) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application, or the applicant's refusal to submit to or cooperate with any investigation required by this part, constitutes an admission by the applicant that the applicant is ineligible for such permit, and is grounds for denial thereof by the board.

## SECTION 8.

(a) To receive a permit as an entertainer or employee of an adult-oriented establishment or adult cabaret, an applicant must meet the following standards:

(1)

(A) The applicant shall be at least eighteen (18) years of age;

(B) The applicant shall not have had a permit as an entertainer or employee of an adult-oriented establishment or adult cabaret revoked within two (2) years immediately preceding the date of the application;

(C) The applicant shall not have been convicted of a "specified criminal act," as defined in § 7-51-1102, for which:

(i) Less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) Less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; and

(iii) Less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve-month period;

(2) The fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(3) An applicant who has been convicted of any specified criminal activities may not be denied a permit based on those convictions once the time period required in subdivision (a)(1)(C) has elapsed.

(b) No permit shall be issued until the board has investigated the applicant's qualifications to receive a permit pursuant to Section 7. The board shall only deny a permit application for reasons set forth in this part.

#### SECTION 9.

(a) Every permit issued under this part to an employee or entertainer shall terminate at the expiration of one (1) year from the date of issuance, unless sooner

revoked, and must be renewed before an entertainer or employee is allowed to perform any service or provide entertainment within an adult-oriented establishment or adult cabaret in the following calendar year. Any entertainer or employee desiring to renew a permit shall make application to the board. The application for renewal must be filed not later than thirty (30) days before the permit expires. The application for renewal shall be filed in such number as the board may require, or in triplicate if no number is specified, and dated by the board. The application for renewal shall be upon a form provided by the board and shall contain such information and data relative to the renewal request, such as the applicant's qualifications, or whether there are grounds for denying the renewal, given under oath or affirmation, as may be required by the board.

(b) A permit renewal fee as established by the board shall be submitted with the application for renewal. In addition to a renewal fee, a late penalty may be imposed by the board.

(c) Notwithstanding anything in this part to the contrary, any application for renewal of a permit shall be handled, investigated, and approved or denied within the same time periods as those established in this part for original permit applications. In the event a permit renewal application is denied, the applicant shall have all rights of appeal to the board as set forth in Section 11.

#### SECTION 10.

(a) The board has the power and authority to enter into any court of the state of Tennessee having proper jurisdiction to seek an injunction against any employee or entertainer not in compliance with the provisions of this part, and is further empowered to enter into any such court to enforce the provisions of this part in order to ensure compliance with such provisions.

(b) Any violation of an injunction obtained under this section is contempt with a fine of fifty dollars (\$50.00).

(c) Each day in contempt of such injunction is considered a separate offense.

(d) The circuit, chancery, or criminal courts of this state and the chancellors and judges of the courts shall have full power, authority, and jurisdiction, upon application by sworn detailed petition filed by the board within their respective jurisdictions, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce this part.

SECTION 11. The provisions of §§ 7-51-1109 and 7-51-1110 relative to the revocation, suspension or annulment of a permit issued to an employee or entertainer and the appeal procedure established pursuant to such sections shall apply to the board and to an employee or entertainer of an adult-oriented establishment or adult cabaret pursuant to this part. Utilizing the same procedures established in such sections, the board shall designate and make available to the public the appropriate public officials with whom requests for a hearing before the board shall be made and the appropriate attorney designated by the board to institute suits indicated in such sections for the board.

SECTION 12. Tennessee Code Annotated, Section 7-51-1404, is amended by deleting the section in its entirety and by substituting instead the following language:

(a)

(1) A violation of this part shall, for a first offense, be a Class B misdemeanor, punishable by a fine only of five hundred dollars (\$500), and shall result in the suspension or revocation of any permit issued by the board.

(2) A second or subsequent violation of this part is a Class A misdemeanor, punishable by a fine only and, in addition shall result in the suspension or revocation of any permit issued by the board.

(b) Each violation of this part shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.

SECTION 13. Nothing in this act shall preempt an ordinance, regulation, restriction or license that was lawfully adopted or issued by a political subdivision in this state prior to the enactment of this act or prevent or preempt a political subdivision in this state from enacting and enforcing in the future other lawful and reasonable restriction, regulation, licensing, zoning or other civil or administrative provisions concerning the location, configuration, code compliance or other business operations or requirement of adult-oriented establishments and sexually-oriented businesses.

SECTION 14. 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 15. This act shall take effect July 1, 2009, the public welfare requiring it.