

CHAPTER 168
FORMERLY
SENATE BILL NO. 179

AN ACT TO AMEND CHAPTER 16 OF TITLE 24 OF THE DELAWARE
CODE RELATING TO ADULT ENTERTAINMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend §1601(a), Title 24 of the Delaware Code by adding the words at the end thereof : "It is the additional finding of the General Assembly that the health, safety and welfare of the people of the State are imperiled by the widespread operation of adult oriented retail businesses without reasonable time, place and manner limitations on such businesses."

Section 2. Amend §1602, Title 24 of the Delaware Code by (i) deleting from the heading the words "Amendment of Adult Entertainment Statute" and inserting the word "Definitions" in their place; (ii) inserting the word "or" at the end of §1602(2) a.2; (iii) deleting the word "or" at the end of §1602(2) a.3.; (iv) deleting §1602(2) a.4. in its entirety; (v) deleting §1602(2)e. in its entirety; (vi) deleting §1602(9) in its entirety; (vii) deleting §1602(10) in its entirety; (viii) deleting §1602(19) in its entirety; (ix) inserting a new §1602(3) as follows "(3) "Adult oriented retail establishment" shall mean any commercial establishment, business or service, or portion thereof, which offers as a substantial portion of their business sexually oriented material, devices, or paraphernalia, but does not allow on-site displays of sexually oriented materials or sexual activities;" and (x) renumbering the remaining subsections of §1602 accordingly.

Section 3. Amend §1603, Title 24 of the Delaware Code by (i) adding the words "No person shall be a member if a member of such person's immediate family is licensed by the Commission, or is an employee of a licensee of the Commission; or if a member of such person's immediate family has a material or financial interest in the providing of goods or services to a licensee of the Commission." at the end of §1603(a); (ii) deleting from §1603(b) the words "The Governor shall appoint the 5 members of the Commission within 30 days of the enactment of this chapter. Two members shall be appointed for 2 years and 2 members for 3 years. Upon the expiration of said terms the Governor shall appoint successors for terms of 3 years. The Chairperson shall be designated by and serve at the pleasure of the Governor." and inserting the words "Members shall serve for terms of three years. The Chairperson shall be elected annually by vote of the members." in their place; (iii) deleting from §1603(b) the words "The Commission shall designate 1 of its members as Secretary-Treasurer."; (iv) deleting from §1603(e) the number "30" and inserting the number "50" in its place; and (v) adding a new subsection (g) to read: "(g) A member of the Commission shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary proceedings shall be disqualified from Commission business until the charge is adjudicated or the matter is otherwise concluded. A Commission member may appeal any suspension or removal to the Superior Court."

Section 4. Amend §1604, Title 24 of the Delaware Code by (i) deleting from §1604(a) the words "occupation of massagist" and inserting the words "operation of adult oriented retail businesses" in their place; (ii) deleting from §1604(b) the words "not less than one day

per month" and inserting the words "as determined by the Commission" in their place; and (iii) deleting the text of §1604(e) in its entirety and inserting in its place the words "The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Commission as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Commission. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year the Division of Professional Regulation, or any state agency acting in its behalf, shall compute for each separate service or activity the appropriate Commission fees for the coming year."

Section 5. Amend §1605, Title 24 of the Delaware Code by (i) deleting from §1605(a) the word "massagists" and inserting the words "adult oriented retail businesses" in its place; and (ii) inserting to §1605(c) the words ", State Police or Department of Homeland Security" after the words "Department of Justice."

Section 6. Amend §1606, Title 24 of the Delaware Code by (i) deleting from §1606(a) the words ", or engage in the occupation of massagist" and inserting the words "or adult oriented retail business" in its place; (ii) adding at the end of §1606(a) the words "Any adult entertainment establishment being operated without a license therefore is hereby declared to be a nuisance for purposes of Chapter 71 of Title 10 of the Delaware Code."; (iii) deleting from §1606(b) the words "occupation of massagist" and inserting the words "operation of an adult oriented retail business" in its place; (iv) deleting §1606(d) in its entirety; (v) adding to existing §1606(e) the words "or adult oriented retail establishment" after the words "adult entertainment establishment"; and (vi) redesignating existing §1606(e) as §1606(d).

Section 7. Amend §1607(a), Title 24 of the Delaware Code by (i) deleting the words "to engage in the occupation of massagist" and inserting the words "for the operation of an adult oriented retail business" in their place; and (ii) deleting the number "1612" and inserting the number "1613" in its place.

Section 8. Amend §1609, Title 24 of the Delaware Code by (i) deleting from §1609(a) the words "Secretary-Treasurer" and adding the word "Chairperson" in its place; (ii) deleting from §1609(b) the words " "massage establishment," "adult bookstore," or as otherwise"; and (iii) deleting the text of §1609(c) in its entirety and inserting the words "Every license for the operation of an adult oriented retail establishment shall describe the location of the premises at which such business is authorized. Where the licensee is a corporation, the license shall state the name and address of said corporation's registered agent in this State, and the name of its registered agent at such address." in their place.

Section 9. Amend §1610, Title 24 of the Delaware Code by (i) adding to the first sentence of §1610(a) the words "or adult oriented retail establishment" after the words "adult entertainment establishment"; (ii) deleting from §1610(b) the words "a massage establishment or an adult bookstore" and adding the words "an adult entertainment establishment or adult oriented retail establishment" in their place; and (iii) redesignating existing §1610(d) as §1610(e) and adding a new §1610(d) to read "(d) No new adult oriented retail establishment shall operate in the same building or in separate buildings less than 500 feet from each other, within 200 feet of any school bus stop or any residence regardless of how such property is

zoned, or within 500 feet from a church or school. Distances shall be measured from property line to property line. No adult oriented retail establishment shall operate in a manner that allows sexually oriented material, devices, or paraphernalia to be visible from outside of the establishment at any time, including during times any door to the business is open. Violations of this subsection shall be punishable by a fine in an amount not to exceed \$5,000."

Section 10. Amend §1611, Title 24 of the Delaware Code by (i) adding to §1611(a) the words "or adult oriented retail establishment" after the words "adult entertainment establishment"; (ii) deleting §1611(b) in its entirety; and (iii) redesignating existing §1611(c) as §1611(b).

Section 11. Amend §1612, Title 24 of the Delaware Code by deleting such section in its entirety.

Section 12. Amend §1613, Title 24 of the Delaware Code by (i) adding to the heading the words "or adult oriented retail establishment" after the words "Adult entertainment establishment"; (ii) adding to §1613(a) the words "or adult oriented retail establishment" after the words "adult entertainment establishment"; (iii) adding in §1613(b) the words "or adult oriented retail establishment" after the words "adult entertainment establishment" in each of the three places such words appear; (iv) adding to §1613(f) the words "or adult oriented retail establishment" after the words "adult entertainment establishment"; (v) deleting from §1613(f) the words "of \$100 plus a fee of \$25 for each separate branch or business location" and adding the words "as determined by the Division of Professional Regulation" in their place; and (vi) adding to §1613(g) the words "or adult oriented retail establishment" after the words "adult entertainment establishment."

Section 13. Amend §1616, Title 24 of the Delaware Code by (i) deleting subsections (b) and (c) in their entirety; (ii) removing the designation of the remaining text as section (a); (iii) inserting the words "or adult oriented retail establishment" after the words "adult entertainment establishment;" and (iv) adding at the end of such text the words ", provided that the Commission may refuse to license an applicant if the Commission has substantial evidence that would reasonably support a belief that a substantial objection to the granting of the license has been presented by the community within which the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of this subsection, the term 'substantial objection' shall include:

a. Any objection, or group of objections, presented to the Commission either individually or as a group, by persons who reside within the election district where the license is to operate and all contiguous election districts, sufficient to give the Commission reason to believe that a majority of the residents of the community within which the license is to operate oppose the issuance of the license; or

b. Any objection, or group of objections, presented to the Commission either individually or as a group, the content of which gives the Commission reason to believe the quality of life of the community within which the license is to operate will be adversely affected by the granting of the license."

Section 14. Amend §1617, Title 24 of the Delaware Code by (i) deleting from §1617(a) the words "other than a massage establishment" and adding the words "or adult oriented retail establishment" in their place"; (ii) deleting §1617(c); (iii) deleting the words "other than a

massage establishment" from existing §1617(d) and adding the words "or adult oriented retail establishment" in their place; and (iv) redesignating existing §1617(d) as §1617(c).

Section 15. Amend §1618, Title 24 of the Delaware Code by deleting such subsection in its entirety.

Section 16. Amend §1619(b), Title 24 of the Delaware Code by deleting the words "or §1616 of this title."

Section 17. Amend §1620, Title 24 of the Delaware Code by deleting such section in its entirety.

Section 18. Amend §1621, Title 24 of the Delaware Code by (i) deleting §1621(a) in its entirety; and (ii) redesignating existing subsections (b), (c) and (d) as subsections (a), (b) and (c).

Section 19. Amend §1622, Title 24 of the Delaware Code by (i) adding to the heading the words "or adult oriented retail establishment" after the words "adult entertainment establishment"; and (ii) adding to §1622(a) the words "or adult oriented retail establishment" after the words "adult entertainment establishment."

Section 20. Amend §1623, Title 24 of the Delaware Code by deleting the words ", except as provided in §1607(c) of this title,".

Section 21. Amend §1624, Title 24 of the Delaware Code by deleting such section in its entirety.

Section 22. Amend §1629(a), Title 24 of the Delaware Code by deleting the words "or massage".

Approved July 16, 2009