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# Legislators debate the place of nudity in theaters vs. bars

RICHMOND

The strip clubs on George Washington Highway in Chesapeake are a long way from the halls of the General Assembly.

But for about a half hour Friday morning, the Senate Committee on Rehabilitation and Social Services wrestled with questions of art, nudity, and noise as they considered HB1171.

Among other things, the legislation clarifies what constitutes lewd conduct at an establishment regulated by the Virginia Department of Alcoholic Beverage Control - and furnishes a detailed list of prohibited activities.

A little nudity during a performance of Shakespeare's "Othello"? That's OK.

The Sex Workers' Art Show? Maybe.

But topless dancers in Chesapeake?

No way, Del. John Cosgrove and Virginia Attorney General Bob McDonnell say.

Lawmakers decided they needed a little more time to ponder some of those questions. They voted 8-7 to consider the bill some more and take it up again next week.

Cosgrove, R-Chesapeake, sponsored the bill at McDonnell's request. They drew up the legislation in response to a decision by a federal judge in Norfolk.

In August, U.S. District Judge Walter D. Kelley Jr. struck down Virginia's law and ABC regulations on what constitutes noisy, lewd and disorderly conduct in restaurants and clubs, determining that they were unconstitutional.

His decision came after the owners of six nightclubs in South Hampton Roads - four at the Virginia Beach Oceanfront and two in downtown Norfolk - sued the ABC board after receiving citations for lewd and disorderly conduct.

Kelley also stopped ABC agents from issuing citations, outside of "obscene" behavior.

The judge's action left the ABC with little enforcement authority, Assistant Attorney General Catherine Crooks Hill told the committee.

"That's why you have topless dancers in Chesapeake," Hill said.

Since the injunction, at least two clubs in Chesapeake, Headlights and J.B.'s Gallery of Girls, situated side-by-side on George Washington Highway, have allowed their dancers to perform topless.

Before the decision, those clubs followed local and state law that requires nipple coverings.

On a recent afternoon, as women danced topless behind him, Headlights representative Buddy Brown declined comment.

The judge's decision carries statewide implications, Hill said. "It's a potential free-for-all, if you will, throughout the commonwealth."

Virginia Beach attorney Kevin Martingayle, who represents several restaurants and nightclubs at the Oceanfront and in downtown Norfolk, said in a phone interview that the General Assembly should strip the ABC board of any enforcement duties other than those involving serving alcohol.

"There's really no reason for the Department of Alcoholic Beverage Control to be worrying about noise, disorderly conduct and nudity or obscenity," he said.

Martingayle suggested those duties fall solely to local and state police.

Cosgrove's bill draws a distinction for lewd behavior in the name of art, however.

Bad language, stripteases and nudity in ABC-regulated venues such as theaters, concert halls and museums would be allowed if the performances are not obscene and have "serious literary, artistic, scientific, or political value."

Kent Willis, executive director of the American Civil Liberties Union of Virginia, said in a phone interview the bill appears to have fixed problems with the previous law, which he said was too vague.

"The question that remains is whether the new restrictions are constitutional and certainly, if they are, there will be some questions about how they are applied," he said.

Sen. Frank Wagner, R-Virginia Beach, wondered how the legislation would play out in his district, which hosts a lot of outdoor concerts.

"I'm not seeing a standard of fairness here," he said.

Sen. Ken Cuccinelli, R-Fairfax, questioned whether the bill would apply to the Sex Workers' Art Show that generated controversy at the College of William and Mary. (Only if it was held at an ABC-regulated establishment.)

Sen. Emmett Hanger, R-Augusta, said he saw a double standard in the legislation.

"I don't see that we should carve out an exception for the arts for all this lewd activity," Hanger said.

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