

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator J. Lee

1 A BILL for an Act to create and enact a new section to chapter 57-38 of the North Dakota
2 Century Code, relating to registration of certain sexually oriented businesses; and to amend
3 and reenact section 57-38-01 of the North Dakota Century Code, relating to the definition of a
4 sexually oriented business.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 57-38-01 is amended:

7 **57-38-01. Definitions.** As used in this chapter, unless the context or subject matter
8 otherwise requires:

- 9 1. "Chronically mentally ill" means a person who, as a result of a mental disorder,
10 exhibits emotional or behavioral functioning which is so impaired as to interfere
11 substantially with the person's capacity to remain in the community without verified
12 supportive treatment or services of a long-term or indefinite duration. This mental
13 disability must be severe and persistent, resulting in a long-term limitation of the
14 person's functional capacities for primary activities of daily living such as
15 interpersonal relationships, homemaking, self-care, employment, and recreation.
- 16 2. "Corporation" includes associations, business trusts, joint stock companies, and
17 insurance companies.
- 18 3. "Developmental disability" has the same meaning as defined in section 25-01.2-01.
- 19 4. "Domestic" when applied to a corporation means created or organized under the
20 laws of North Dakota.
- 21 5. "Federal Internal Revenue Code of 1954, as amended", "United States Internal
22 Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as
23 amended", mean the United States Internal Revenue Code of 1986, as amended.
24 Reference to the Internal Revenue Code of 1954, as amended, includes a

1 reference to the United States Internal Revenue Code of 1986, as amended, and
2 reference to the United States Internal Revenue Code of 1986, as amended,
3 includes a reference to the provisions of law formerly known as the Internal
4 Revenue Code of 1954, as amended.

5 a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of
6 1954, as amended, are not adopted in those instances when the minimum
7 investment by the lessor is less than one hundred percent for the purpose of
8 computing North Dakota taxable income for individuals, estates, trusts, and
9 corporations for taxable years beginning on or after January 1, 1983.

10 Therefore, federal taxable income must be increased, or decreased, as the
11 case may be, to reflect the adoption or nonadoption of the provisions of
12 section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and
13 such adjustments must be made before computing income subject to
14 apportionment.

15 b. Provided, that one-half of the amount not allowed as an accelerated cost
16 recovery system depreciation deduction for the taxable year beginning after
17 December 31, 1982, may be deducted from federal taxable income in each of
18 the next two taxable years beginning after December 31, 1985, and one-half
19 of the amount not allowed as an accelerated cost recovery system
20 depreciation deduction for the taxable year beginning after December 31,
21 1983, may be deducted from federal taxable income in each of the next two
22 years beginning after December 31, 1987, and one-half of the amount not
23 allowed as an accelerated cost recovery system depreciation deduction for
24 the taxable year beginning after December 31, 1984, may be deducted from
25 federal taxable income in each of the next two taxable years beginning after
26 December 31, 1989. All such adjustments must be made before computing
27 income subject to apportionment.

28 c. Provided, that the depreciation adjustments allowed in subdivision b shall be
29 limited to those eligible assets acquired during taxable years beginning after
30 December 31, 1982. Acquisitions made before taxable years beginning

January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.

d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.

6. "Foreign" when applied to a corporation means created or organized outside of North Dakota.

7. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:

a. Conditions which are primarily those of drug abuse, alcoholism, or mental retardation, unless in addition to one or more of these conditions, the person has a mental disorder.

b. The declining mental abilities that accompany impending death.

c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

8. "Person" includes individuals, fiduciaries, partnerships, corporations, and limited liability companies.

9. "Qualified investment fund" means any regulated investment company as defined under the Internal Revenue Code, which for the calendar year in which the distribution is paid:

a. Has investments in interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or the United States government; and

b. Has provided the tax commissioner with a detailed schedule of the assets contained in its investment portfolio and a schedule of the income attributable to each asset in its investment portfolio for the calendar year.

10. "Resident" applies only to natural persons and includes, for the purpose of determining liability for the tax imposed by this chapter upon or with reference to the income of any income year, any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state. A full-time active duty member of the armed forces assigned to a military installation in this state, or the spouse of such a person, is not a "resident" of this state for purposes of this chapter simply by reason of having voted in an election in this state.

11. "Sexually oriented business" means a commercial enterprise that advertises, offers, or provides live nude entertainment for a customer in any location other than a licensed liquor establishment. For the purposes of this subsection, "nude" means an individual entirely unclothed or clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the individual is female, or any portion of the genitals or buttocks.

12. "Tax commissioner" means the state tax commissioner.

~~42.~~ 13. "Taxable income" in the case of individuals, estates, trusts, and corporations means the taxable income as computed for an individual, estate, trust, or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this chapter or other provisions of law. Except as otherwise expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.

~~43.~~ 14. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax imposed by this chapter.

~~44.~~ 15. Any term, as used in this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, has the same

1 meaning as when used in a comparable context in the laws of the United States
2 relating to federal income taxes, unless a different meaning is clearly required or
3 contemplated.

4 **SECTION 2.** A new section to chapter 57-38 is created:

5 **Sexually oriented business - Registration.** A person that operates a sexually
6 oriented business or performs nude entertainment for a sexually oriented business shall register
7 annually with the tax commissioner. The tax commissioner shall provide forms and guidelines
8 for registration under this section. Each person required to register under this section shall
9 keep detailed records listing all taxable income collected by that person. An individual providing
10 live nude entertainment shall have the detailed record in that individual's possession at any time
11 the individual is providing nude entertainment.