

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1600 Commission On Adult Entertainment Establishments
Statutory Authority: 24 Delaware Code, Section 1604 (24 Del.C. §1604)
24 DE Admin. Code 1600

FINAL

1600 Commission on Adult Entertainment Establishments

ORDER

Pursuant to 24 Del.C. §1604, the Commission on Adult Entertainment Establishments issues this Order adopting a proposed revision to its rules and regulations. Following notice and a public hearing on April 22, 2010, the Board makes the following findings and conclusions:

Summary of the Evidence

The Board posted public notice of the proposed amendment in the April 1, 2010 *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*.

The amendment was proposed to add a definition of "substantial portion" to the rules and regulations. This revision implements the recent amendment to the Commission's licensing law, Chapter 16 of Title 24 of the Delaware Code, with respect to adult oriented retail establishments. The proposed rule change establishes a new Section 2.0 to the Commission's rules and regulations titled "Adult Oriented Retail Establishments" and adopts a new Rule 2.1 reading as follows:

The Commission has determined that as used in 24 Del.C. §1602(3) the term "substantial portion" means fifty percent (50%) or more of the (i) retail floor space open to the public; or (ii) gross receipts earned by the retail establishment.

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on April 22, 2010, at the public hearing on the proposed amendment to the Board's Rules.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on April 22, 2010, at the public hearing. No comments were received by writing. One member of the public did provide comments that were received by testimony at the public hearing and considered by the Commission.

The Board concludes that the proposal should be adopted to establish a new Section 2.0 to the Commission's rules and regulations titled "Adult Oriented Retail Establishments" and adopt a new Rule 2.1 to provide a definition of "substantial portion."

The effective date of this Order will be ten (10) days from the publication of this Final Order in the *Register of Regulations* on January 1, 2011.

It is so ordered this 22nd day of April 2010.

James Nutter, Chairman

1600 Commission on Adult Entertainment Establishments

1.0 Sanctions for Violations

1.1 Pursuant to 24 Del.C. §1618(c), the Commission may, following a hearing, impose civil fines and/or license suspensions for violations of the following statutes:

1.1.1 24 Del.C. §1608

1.1.2 24 Del.C. §1610

1.1.3 24 Del.C. §1611

1.1.4 24 Del.C. §1617

1.1.5 24 Del.C. §1622

1.1.6 24 Del.C. §1629

- 1.2 The Commission may, in its discretion, impose fines of no less than \$250.00 and no more than \$1000.00 and/or license suspensions of no less than one (1) day and no more than sixty (60) days for each violation of the laws set forth at Rule 1.1.
- 1.3 If a penalty imposed by the Commission, pursuant to this rule, is not complied with pursuant to the terms of the Commission's Order, the Commission shall convene a hearing for the licensee to show cause why the license should not be revoked and/or additional penalties imposed.
- 1.4 Nothing in this rule shall prohibit the Commission from imposing a license revocation in lieu of or in addition to any penalty established under this rule, if license revocation is a penalty authorized by statute for the specific offense(s).

2.0 Adult Oriented Retail Establishments

The Commission has determined that as used in 24 Del.C. §1602(3) the term "substantial portion" means fifty percent (50%) or more of the (i) retail floor space open to the public; or (ii) gross receipts earned by the retail establishment.

13 DE Reg. 1294 (04/01/10)

14 DE Reg. 674 (01/01/11)