

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-382
SENATE BILL 996**

**AN ACT TO PREVENT THE NEGATIVE SECONDARY EFFECTS CAUSED BY
SEXUALLY EXPLICIT CONDUCT ON PREMISES LICENSED BY THE
ALCOHOLIC BEVERAGE CONTROL COMMISSION.**

Whereas, the United States District Court for the Middle District of North Carolina has issued a preliminary injunction, in the case of Carandola v. Bason, enjoining the State of North Carolina from enforcing regulations which prohibit certain sexually explicit conduct on premises licensed by the Alcoholic Beverage Control Commission; and

Whereas, the federal District Court concluded that the regulations are likely to be held to be unconstitutional; and

Whereas, upon review of the federal District Court decision in Carandola, the United States Circuit Court of Appeals for the Fourth Circuit has found that the federal District Court did not abuse its discretion, and has allowed the injunction to remain in place; and

Whereas, the Circuit Court of Appeals for the Fourth Circuit has stated that entertainment such as nude or topless dancing at bars and clubs has "a long history of spawning deleterious effects," including "prostitution and the criminal abuse and exploitation of young women"; and

Whereas, the General Assembly has reviewed studies of the secondary effects of sexually oriented businesses that have been conducted in locations across the United States, including: Phoenix, Arizona; Los Angeles, California; Minneapolis, Minnesota; Austin, Texas; New York City, New York; Oklahoma City, Oklahoma; and other cities; and

Whereas, studies show that negative secondary effects of sexually oriented businesses include increases in crime, such as prostitution, drug offenses, assaults, and sex crimes; and

Whereas, it is not the intent of the General Assembly to suppress the conduct of entertainment at premises licensed by the Alcoholic Beverage Control Commission, but it is the desire of the General Assembly to address the harmful secondary effects of such entertainment, including higher crime rates, public sexual conduct, sexual assault, prostitution, and other secondary negative effects; and

Whereas, it is the intent of the General Assembly to prohibit entertainment at premises licensed by the Alcoholic Beverage Control Commission that provides an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, and the spread of sexually transmitted diseases; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1005(a) reads as rewritten:

"(a) Certain Conduct. – It shall be unlawful for a permittee or his agent or employee to knowingly allow any of the following kinds of conduct to occur on his licensed premises:

- (1) Any violation of this Chapter;
- (2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, his employees or patrons; or

- (3) Any violation of the controlled substances, gambling, or prostitution statutes, or any other unlawful acts.
- (4) ~~Any conduct or entertainment by any person whose private parts are exposed or who is wearing transparent clothing that reveals the private parts;~~
- (5) ~~Any entertainment that includes or simulates sexual intercourse or any other sexual act; or~~
- (6) ~~Any other lewd or obscene entertainment or conduct, as defined by the rules of the Commission."~~

SECTION 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1005.1. Sexually explicit conduct on licensed premises.

(a) It shall be unlawful for a permittee or his agent or employee to knowingly allow or engage in any of the following kinds of conduct on his licensed premises:

- (1) Any conduct or entertainment by any person whose genitals are exposed or who is wearing transparent clothing that reveals the genitals;
- (2) Any conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes or simulates the penetration, however slight, by any object into the genital or anal opening of a person's body; or
- (3) Any conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals.

(b) Supervision. – It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

(c) Exception. – This section does not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value."

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:32 a.m. this 1st day of August, 2003