

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**SENATE BILL 996
Judiciary I Committee Substitute Adopted 4/28/03**

Short Title: ABC-Sexually Explicit Conduct Banned.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

1 AN ACT TO PREVENT THE NEGATIVE SECONDARY EFFECTS CAUSED BY
2 SEXUALLY EXPLICIT CONDUCT ON PREMISES LICENSED BY THE
3 ALCOHOLIC BEVERAGE CONTROL COMMISSION.
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5 Whereas, the United States District Court for the Middle District of North
6 Carolina has issued a preliminary injunction, in the case of Carandola v. Bason,
7 enjoining the State of North Carolina from enforcing regulations which prohibit certain
8 sexually explicit conduct on premises licensed by the Alcoholic Beverage Control
9 Commission, and

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

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

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

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

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

28 Whereas, it is not the intent of the General Assembly to suppress the conduct
29 of entertainment at premises licensed by the Alcoholic Beverage Control Commission,

1 but it is the desire of the General Assembly to address the harmful secondary effects of
2 such entertainment, including higher crime rates, public sexual conduct, sexual assault,
3 prostitution, and other secondary negative effects, and

4 Whereas, it is the intent of the General Assembly to prohibit entertainment at
5 premises licensed by the Alcoholic Beverage Control Commission that provides an
6 atmosphere conducive to violence, sexual harassment, public intoxication, prostitution,
7 and the spread of sexually transmitted diseases. Now, therefore,
8 The General Assembly of North Carolina enacts:

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

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

- 13 (1) Any violation of this Chapter;
- 14 (2) Any fighting or other disorderly conduct that can be prevented without
15 undue danger to the permittee, his employees or patrons; or
- 16 (3) Any violation of the controlled substances, gambling, or prostitution
17 statutes, or any other unlawful acts.
- 18 (4) ~~Any conduct or entertainment by any person whose private parts are~~
19 ~~exposed or who is wearing transparent clothing that reveals the private~~
20 ~~parts;~~
- 21 (5) ~~Any entertainment that includes or simulates sexual intercourse or any~~
22 ~~other sexual act; or~~
- 23 (6) ~~Any other lewd or obscene entertainment or conduct, as defined by the~~
24 ~~rules of the Commission."~~

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

27 "**§ 18B-1005.1. Sexually explicit conduct on licensed premises.**

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

- 30 (1) Any conduct or entertainment by any person whose private parts are
31 exposed or who is wearing transparent clothing that reveals the private
32 parts;
- 33 (2) Any conduct or entertainment that includes or simulates sexual
34 intercourse, masturbation, sodomy, bestiality, oral copulation,
35 flagellation, or any other sexual act;
- 36 (3) Any conduct or entertainment that includes the fondling of the breasts,
37 buttocks, anus, vulva, or genitals; or
- 38 (4) Any other lewd or obscene entertainment or conduct, as defined by the
39 rules of the Commission.

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

42 (c) Exception. – This section does not apply to persons operating theaters,
43 concert halls, art centers, museums, or similar establishments that are primarily devoted

1 to the arts or theatrical performances, and are engaged in expressing a matter of serious
2 literary, artistic, scientific, or political value."

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

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