

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-46
SENATE BILL 452

AN ACT TO CLARIFY LOCAL GOVERNMENT AUTHORITY TO REGULATE
THE LOCATION AND OPERATION OF SEXUALLY ORIENTED
BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding the following new section:

"§ 160A-181.1. Regulation of sexually oriented businesses.

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

- (1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;
- (2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;
- (3) Clothing restrictions for entertainers; and

(4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, 'sexually oriented businesses' means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations."

Section 2. G.S. 14-190.1 is amended by adding a new subsection to read:

"(i) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 3. G.S. 14-190.9 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech."

Section 4. G.S. 14-202.10(1) reads as rewritten:

"(1) 'Adult bookstore' means a bookstore:

- a. Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, and other periodicals) other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or
- b. Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, and

~~other periodicals~~ other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section."

Section 5. G.S. 14-202.11 reads as rewritten:

"§ 14-202.11. Restrictions as to adult establishments.

(a) No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.

(b) No person shall permit any viewing booth in an adult mini motion picture theatre to be occupied by more than one person at any time.

(c) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 6. G.S. 18B-904 is amended by adding the following new subsection:

"(g) Nothing in this Chapter shall be deemed to preempt local governments from regulating the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech, or from requiring any additional fee for licensing as permitted under G.S. 160A-181.1(c)."

Section 7. G.S. 19-1 reads as rewritten:

"§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(c) The building, ~~or place, or vehicle,~~ place, vehicle, or the ground itself, in or upon which a nuisance as defined in ~~subsections (a) or (b) above~~ subsection (a), (b), or

(b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1998.

s/ Frank W. Ballance, Jr.
Deputy President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:27 p.m. this 15th day of July, 1998