

Senate Bill 335

By: Senators Carter of the 13th, Johnson of the 1st, Schaefer of the 50th, Pearson of the 51st,
Chance of the 16th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated,
2 relating to control of signs and signals on or near public roads, so as to restrict the location
3 of certain sexually oriented billboards; to define certain terms; to provide for temporary
4 exemptions; to provide punishments for violations; to provide for injunctive relief from
5 nuisances; to provide legislative findings and declarations; to repeal certain provisions of law
6 restricting outdoor advertising which were declared unconstitutional by the Georgia Supreme
7 Court in the case of *State v. Cafe Erotica, Inc.*, 270 Ga. 97 (1998); to repeal conflicting laws;
8 and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, relating to
12 control of signs and signals on or near public roads, is amended by adding a new Code
13 Section to read as follows:

14 "32-6-52.

15 (a) As used in this Code section, the term:

16 (1) 'Adult cabaret' means a nightclub, bar, restaurant, or similar establishment in which
17 persons appear in a state of nudity or seminudity in the performance of their duties.

18 (2) 'Nudity' means the showing of either:

19 (A) The human male or female genitals or pubic area with less than a fully opaque
20 covering; or

21 (B) The female breast with less than a fully opaque covering on any part of the nipple.

22 (3) 'Seminudity' means a state of dress in which opaque clothing fails to cover the
23 genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple, or areola of the female
24 breast below a horizontal line across the top of the areola at its highest point. Seminudity
25 shall also include the showing of the entire lower portion of the female breast, but shall
26 not include any portion of the cleavage of the human female breast exhibited by wearing

1 apparel if the areola is not exposed in whole or part.

2 (4) 'Sexually oriented materials' means any textual, pictorial, or three-dimensional
3 material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse
4 in a way which is patently offensive to the average person applying contemporary adult
5 community standards with respect to what is suitable for minors.

6 (b)(1) No billboard or other exterior advertising sign for an adult cabaret or sexually
7 oriented business shall be located within one mile of any public road in the state highway
8 system as defined in Code Section 32-4-1, except that if such business is located within
9 one mile of such a public road then the business may display a maximum of two exterior
10 signs on the premises of the business, consisting of one identification sign and one sign
11 solely giving notice that the premises are off limits to minors. The identification sign
12 shall be no more than 40 square feet in size and shall include no more than the following
13 information: the name, street address, telephone number, and operating hours of the
14 business.

15 (2) Signs existing on the effective date of this Code section which do not conform to the
16 requirements of this Code section may be allowed to continue as a nonconforming use,
17 but shall be required to conform within three years after the effective date of this Code
18 section.

19 (c) Any owner of a business that violates the provisions of this Code section shall be guilty
20 of a misdemeanor. Each week a violation of this Code section continues to exist shall
21 constitute a separate offense.

22 (d) Any outdoor advertising displayed in violation of subsection (b) of this Code section
23 is declared to be a public nuisance. In addition to any other remedies provided for by law,
24 the department is authorized to bring an equitable proceeding to enjoin any person from
25 displaying such outdoor advertising in violation of subsection (b) of this Code section. It
26 shall not be necessary for the department to allege and prove that there is no adequate
27 remedy at law in order to obtain the equitable relief provided for in this subsection.

28 (e) This Code section is intended to protect public policy interests of this state, including
29 but not limited to: mitigation of the adverse secondary effects of sexually oriented
30 businesses, improvement of traffic safety, limiting harm to minors, and reducing
31 prostitution, crime, juvenile delinquency, deterioration in property values, and lethargy in
32 neighborhood improvement efforts."

33 SECTION 2.

34 Said article is further amended by striking subsection (b) of Code Section 32-6-75, relating
35 to restrictions on certain outdoor advertising, and inserting in lieu thereof the following:

36 ~~"(b)(1) As used in this subsection, the term 'nudity' means the displaying of any portion of~~

1 ~~the female breast below the top of the areola or the displaying of any portion of any~~
2 ~~person's pubic hair, anus, cleft of the buttocks, vulva, or genitals.~~

3 ~~(2) Since the exhibition of nudity or depictions of nudity in connection with the sale or~~
4 ~~consumption of alcoholic beverages may be restricted or prohibited in certain political~~
5 ~~subdivisions of this state pursuant to Article III, Section VI, Paragraph VII of the~~
6 ~~Constitution, since an outdoor advertising device advertising a commercial establishment~~
7 ~~where nudity is exhibited which is located in a political subdivision different from where~~
8 ~~the commercial establishment is located may mislead the traveling public and cause a~~
9 ~~devaluation of the property in the area surrounding such outdoor advertising, and since~~
10 ~~outdoor advertising of a commercial establishment where nudity is exhibited may divert~~
11 ~~the attention of drivers and thus cause traffic hazards, it is the intent of the General~~
12 ~~Assembly to protect the welfare and safety of the residents of this state and the traveling~~
13 ~~public by regulating outdoor advertising of commercial establishments where nudity is~~
14 ~~exhibited.~~

15 ~~(3) Any outdoor advertising of a commercial establishment where nudity is exhibited~~
16 ~~shall be limited to the property where such commercial establishment is located, and the~~
17 ~~size, type, and number of outdoor advertising devices on any such property may be~~
18 ~~further regulated by rules and regulations promulgated by the commissioner of~~
19 ~~transportation.~~

20 (b) Reserved.

21 **SECTION 3.**

22 All laws and parts of laws in conflict with this Act are repealed.