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HIGHWAYS, BRIDGES, AND FERRIES Regulation of Maintenance and Use of Public Roads Generally: Provide that No Outdoor Advertising Depicting Obscene Material Shall be Allowed; Restrict Outdoor Advertising of Commercial Establishments Where Nudity is Exhibited

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HIGHWAYS, BRIDGES, AND FERRIES

Regulation of Maintenance and Use of Public Roads Generally: Provide that No Outdoor Advertising Depicting Obscene Material Shall be Allowed; Restrict Outdoor Advertising of Commercial Establishments Where Nudity Is Exhibited

CODE SECTION:	O.C.G.A. § 32-6-75 (amended)
BILL NUMBER:	SB 586
ACT NUMBER:	867
GEORGIA LAWS:	1996 Ga. Laws 831
SUMMARY:	The Act prohibits outdoor advertising that depicts obscene material. The Act restricts outdoor advertising of commercial establishments that exhibit nudity, limiting the advertising to the property of the establishment.
EFFECTIVE DATE:	July 1, 1996

History

Over the last several years, local Chambers of Commerce have received many letters and phone calls from angry parents concerned about the billboard signs along interstates such as I-75 that advertise adult entertainment clubs.[1] The parents were appalled at having their children see these signs when they drive them to and from Atlanta.[2] The Sheriff's Association sought help from the General Assembly, which responded with this Act to restrict these advertisements.[3]

SB 586

The Act amends Code section 32-6-75, which provides restrictions on outdoor advertising along the state highway system, by adding subsections (a)(21) and (b)(1) through (b)(3).[4] Subsection (a) previously listed twenty types of unlawful signs, such as signs that are "not

1. Telephone Interview with Sen. Rooney L. Bowen, Senate District No. 13 (Apr. 23, 1996) [hereinafter Bowen Interview]. Senator Bowen co-sponsored the Act. *Id.*
2. *Id.*
3. *Id.*; Telephone Interview with Sen. Sonny Perdue, Senate District No. 18 (May 23, 1996) [hereinafter Perdue Interview]. Senator Perdue co-sponsored the Act. Perdue Interview, *supra*.
4. O.C.G.A. § 32-6-75 (1996). SB 586 passed the General Assembly in its original form. *See* Final Composite Status Sheet, Mar. 18, 1996.

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structurally safe"[5] and ones "within 500 feet of a public park."[6] The Act amends this list by adding a prohibition on signs that "[d]epict[ ] any material which is obscene."[7]

The new subsection (b) further provides "[a]ny outdoor advertising of a commercial establishment where nudity is exhibited shall be limited to the property where such commercial establishment is located."[8] The purpose of this provision is to keep adult entertainment clubs from advertising all over town, especially along the interstates on which families must drive.[9] The Act cites two reasons for this regulation: (1) if the advertisement is in a place different from where the commercial establishment exhibiting nudity is located, the traveling public may be misled and property surrounding the advertisement may be devalued, and (2) such advertising may divert the attention of drivers and cause traffic hazards.[10] Thus, the Act's purpose is to protect the welfare and safety of state residents and the traveling public.[11]

The General Assembly passed the Act pursuant to article III, section 6, paragraph 7 of the Georgia Constitution, which provides for the regulation of the exhibition of nudity in connection with the sale or consumption of alcoholic beverages.[12] However, regulating advertisements, even those related to alcohol and nudity, may infringe on fundamental constitutional rights—specifically, the First Amendment right to free speech.[13] The Legislative Counsel researched the issue and concluded that no constitutional problem existed.[14] Others disagree, reasoning that this Act is content-based and thus deserving of strict scrutiny.[15] Opponents of the Act argue that its regulatory aim—safety—has no rational relation to restricting an establishment's advertisements to its own property.[16] In addition, some

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5. 1971 Ga. Laws Ex. Sess. 5, § 4, at 12 (codified at O.C.G.A. § 32-6-75(3) (1996)).

6. *Id.* at 13 (codified at O.C.G.A. § 32-6-75(14) (1996)).

7. O.C.G.A. § 32-6-75(a)(21) (1996). The Act provides that the definition of "obscene" is to be found in O.C.G.A. § 16-12-80. *Id.*

8. *Id.* § 32-6-75(b)(3). "Nudity" is defined in this new subsection. *Id.* § 32-6-75(b)(1).

9. Bowen Interview, *supra* note 1.

10. O.C.G.A. § 32-6-75(b)(2) (1996).

11. *Id.*

12. *Id.*; GA. CONST. art. III, § 6, ¶ 7.

13. Telephone Interview with Alan Begner, Lawyer (May 23, 1996) [hereinafter Begner Interview]. Begner represents several Atlanta adult entertainment clubs. *Id.* The Supreme Court recently held that Rhode Island's statutory ban on price advertising for alcoholic beverages abridged the First Amendment right to free speech. 44 Liquormart, Inc. v. Rhode Island, 116 S. Ct. 1495 (1996). The Court noted that complete bans on truthful advertising, unlike content neutral restrictions on time, place, and manner, warrant strict constitutional review. *Id.*

14. Perdue Interview, *supra* note 3.

15. Begner Interview, *supra* note 13.

16. *Id.*

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believe this Act violates article I, section 1, paragraph 10 of the Georgia Constitution, which reads: "No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed."[17] Critics contend the Act will retroactively affect entertainment clubs that already have billboard advertisements along the highways.[18]

John Howe

17. GA. CONST. art. I, § 1, ¶ 10.
18. Begner Interview, *supra* note 13.

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