

2017 Regular Session

SENATE BILL NO. 144

BY SENATOR JOHNS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIME/PUNISHMENT. Prohibits full or partial nudity under certain circumstances by certain employees of establishments that sell alcoholic beverages. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 26:90(D), (E), (F), and (G) and 286(D), (E), (F), and (G), to
3 enact R.S. 26:90(L) and 286(K), and to repeal R.S. 26:90(B)(4) and 286(B)(4),
4 relative to holders of alcoholic retail dealer's permits for beverages or high alcoholic
5 content or low alcoholic content; to provide relative acts prohibited on the premises;
6 to provide relative to age restrictions on certain conduct under certain circumstances;
7 to provide relative to legislative intent; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 26:90(D), (E), (F), and (G) and 286(D), (E), (F), and (G) are hereby
10 amended and reenacted and R.S. 26:90(L) and 286(K) are hereby enacted to read as follows:

11 §90. Acts prohibited on licensed premises; suspension or revocation of permits

12 * * *

13 ~~D. Live entertainment is permitted on any licensed premises, except that no~~
14 ~~No~~ permittee shall permit any person to ~~perform acts of or acts which simulate:~~
15 **engage in**

16 ~~(1) Sexual~~ **sexual** intercourse, masturbation, sodomy, bestiality, oral
17 copulation, flagellation, or any sexual acts which are prohibited by law.

1 ~~(2) The touching, caressing or fondling of the breast, buttocks, anus, or~~
2 ~~genitals.~~

3 ~~(3) The displaying of the pubic hair, anus, vulva, genitals, or nipple of the~~
4 ~~female breast.~~

5 E. ~~Subject to the provisions of Subsection D of this Section, entertainers~~
6 ~~whose breasts or buttocks are exposed to view shall perform only~~ **(1) No permittee**
7 **shall allow any person to appear in a semi-nude condition upon the licensed**
8 **premises unless the person is twenty-one years of age or older and, while semi-**
9 **nude, the person shall remain** upon a stage at least eighteen inches above the
10 immediate floor level and removed at least three feet from the nearest patron ~~and~~
11 ~~shall be twenty-one years of age or older.~~

12 **(2) For purposes of this Subsection, "semi-nude" means the showing of**
13 **the female breast below a horizontal line across the top of the areola and**
14 **extending across the width of the breast at that point, or the showing of a**
15 **majority of the male or female buttocks, and shall include the lower portion of**
16 **the female breast, but shall not include any portion of the cleavage of the female**
17 **breast exhibited by a bikini, dress, blouse, shirt, leotard, or similar apparel**
18 **provided that the areola is not exposed in whole or in part.**

19 F.**(1)** No permittee shall permit any person to ~~use artificial devices or~~
20 ~~inanimate objects to depict any of the prohibited activities described above~~ **appear**
21 **upon the licensed premises in a state of nudity.**

22 **(2) For purposes of this Subsection, "nudity" means the showing of the**
23 **male or female genitals, pubic area, vulva, or anus with less than a fully opaque**
24 **covering, or the showing of the female breast with less than a fully opaque**
25 **covering of any part of the female nipple and areola. For purposes of this**
26 **Subsection, a "fully opaque covering" shall not be flesh colored, shall not**
27 **consist of any substance that can be washed off of the skin, including paint or**
28 **makeup, and shall not simulate the appearance of the anatomical area that it**
29 **covers.**

1 prostitution, potential spread of disease, lewdness, illicit drug use and drug
 2 trafficking, and sexual assault and exploitation. The state has a substantial
 3 governmental interest in preventing or abating such negative secondary effects.
 4 The use of underage girls and boys to appear as topless and nude dancers in
 5 adult cabarets has also been documented in Louisiana and across the country.
 6 The state has a substantial governmental interest in protecting young and
 7 vulnerable individuals from the risk of being prostituted or being trafficked for
 8 sex. The provisions of this Section have neither the purpose nor effect of
 9 imposing a limitation or restriction on the content or reasonable access of any
 10 speech activities protected by the Constitution of Louisiana and the Constitution
 11 of the United States. Rather, these provisions further the content-neutral
 12 governmental interests of the state, to wit, the controlling of secondary effects
 13 of certain activities at alcohol-serving establishments.

14 * * *

15 §286. Acts prohibited on licensed premises; suspension or revocation of permits

16 * * *

17 ~~D. Live entertainment is permitted on any licensed premises, except that no~~
 18 ~~No~~ permittee shall permit any person to perform acts of or acts which simulate:
 19 engage in

20 ~~(1) Sexual~~ sexual intercourse, masturbation, sodomy, bestiality, oral
 21 copulation, flagellation, or any sexual acts which are prohibited by law.

22 ~~(2) The touching, caressing or fondling of the breast, buttocks, anus, or~~
 23 ~~genitals.~~

24 ~~(3) The displaying of the pubic hair, anus, vulva, genitals, or nipple of the~~
 25 ~~female breast.~~

26 E.(1) Subject to the provisions of Subsection D of this Section, entertainers
 27 whose breasts or buttocks are exposed to view shall perform only No permittee
 28 shall allow any person to appear in a semi-nude condition upon the licensed
 29 premises unless the person is twenty-one years of age or older and, while semi-

1 nude, the person shall remain upon a stage at least eighteen inches above the
2 immediate floor level and removed at least three feet from the nearest patron ~~and~~
3 shall be twenty-one years of age or older.

4 (2) For purposes of this Subsection, "semi-nude" means the showing of
5 the female breast below a horizontal line across the top of the areola and
6 extending across the width of the breast at that point, or the showing of a
7 majority of the male or female buttocks, and shall include the lower portion of
8 the female breast, but shall not include any portion of the cleavage of the female
9 breast exhibited by a bikini, dress, blouse, shirt, leotard, or similar apparel
10 provided that the areola is not exposed in whole or in part.

11 F.~~(1)~~ No permittee shall permit any person to ~~use artificial devices or~~
12 ~~inanimate objects to depict any of the prohibited activities described above~~ appear
13 upon the licensed premises in a state of nudity.

14 (2) For purposes of this Subsection, "nudity" means the showing of the
15 male or female genitals, pubic area, vulva, or anus with less than a fully opaque
16 covering, or the showing of the female breast with less than a fully opaque
17 covering of any part of the female nipple and areola. For purposes of this
18 Subsection, a "fully opaque covering" shall not be flesh colored, shall not
19 consist of any substance that can be washed off of the skin, including paint or
20 makeup, and shall not simulate the appearance of the anatomical area that it
21 covers.

22 G. ~~The following acts or conduct on licensed premises are deemed to~~
23 ~~constitute lewd, immoral, or improper entertainment as prohibited by this Section~~
24 ~~and therefore no on-sale permit for beverages of high alcoholic content shall be held~~
25 ~~at any premises where such conduct or acts are permitted, including the showing of~~
26 ~~film, still pictures, electronic reproduction, or other visual reproductions depicting:~~

27 ~~(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy,~~
28 ~~bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by~~
29 ~~law.~~

1 **imposing a limitation or restriction on the content or reasonable access of any**
 2 **speech activities protected by the Constitution of Louisiana and the Constitution**
 3 **of the United States. Rather, these provisions further the content-neutral**
 4 **governmental interests of the state, to wit, the controlling of secondary effects**
 5 **of certain activities at alcohol-serving establishments.**

6 Section 2. R.S. 26:90(B)(4) and 286(B)(4) are hereby repealed in their entirety.

7 Section 3. This Act shall become effective upon signature by the governor or, if not
 8 signed by the governor, upon expiration of the time for bills to become law without signature
 9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 11 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 144 Original

2017 Regular Session

Johns

Present law provides relative to holders of alcoholic retail dealer's permits for beverages of high alcoholic content or low alcoholic content.

Present law provides that with regard to holders of alcoholic retail dealer's permits for beverages of both high alcoholic content or low alcoholic content, the following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by present law and therefore no on-sale permit for beverages of high alcoholic content can be held at any premises where such conduct or acts are permitted:

- (1) Employment or use of any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals.
- (2) Employment or use of the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume, or clothing.
- (3) Encouraging or permitting any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, or genitals of any other person.
- (4) Permitting any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair, or any portion thereof.

Proposed law deletes item (4) from the list, above, as the same subject matter is covered by other provisions of proposed law. Proposed law otherwise retains present law.

Present law provides that live entertainment is permitted on any licensed premises, except

that no permittee can permit any person to perform acts of or acts that simulate:

- (1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
- (2) The touching, caressing or fondling of the breast, buttocks, anus, or genitals.
- (3) The displaying of the pubic hair, anus, vulva, genitals, or nipple of the female breast.

Proposed law deletes the present law reference to "live entertainment" and deletes items (2) and (3) from the list, above, as the same subject matter is covered by other provisions of present law and proposed law. Proposed law otherwise retains present law.

Present law provides that, subject to provisions of present law, entertainers whose breasts or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least three feet from the nearest patron and shall be 21 years of age or older.

Proposed law deletes the present law reference to "breasts or buttocks" and provides that no permittee can allow any person to appear in a semi-nude condition upon the licensed premises unless the person is 21 years of age or older and, while semi-nude, the person must remain upon a stage at least 18 inches above the immediate floor level and removed at least three feet from the nearest patron. Proposed law defines "semi-nude" as the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of a majority of the male or female buttocks, and includes the lower portion of the female breast, but does not include any portion of the cleavage of the female breast exhibited by a bikini, dress, blouse, shirt, leotard, or similar apparel provided that the areola is not exposed in whole or in part.

Present law provides that no permittee can permit any person to use artificial devices or inanimate objects to depict any of the activities described as prohibited in present law.

Proposed law deletes present law and provides that no permittee can permit any person to appear upon the licensed premises in a state of nudity. Proposed law defines "nudity" as the showing of the male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the female nipple and areola. Proposed law provides that a "fully opaque covering" cannot be flesh colored, cannot consist of any substance that can be washed off of the skin, including paint or makeup, and cannot simulate the appearance of the anatomical area that it covers.

Present law provides that the following acts or conduct on licensed premises are deemed to constitute lewd, immoral, or improper entertainment as prohibited by present law and therefore no on-sale permit for beverages of high alcoholic content can be held at any premises where such conduct or acts are permitted, including the showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

- (1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
- (2) Any person being touched, caressed or fondled on the breast, buttocks, anus, or genitals.
- (3) Scenes wherein a person displays the vulva or the anus or the genitals.
- (4) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the activities prohibited by present law.

Proposed law deletes present law and adds that proposed law relative to appearing in a semi-nude condition or in a state of nudity only applies upon a licensed premises that regularly offers live performances or other conduct involving nudity or semi-nudity.

Proposed law provides relative to legislative findings and intent.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends 26:90(D), (E), (F), and (G) and 286(D), (E), (F), and (G); adds R.S. 26:90(L) and 286(K); repeals R.S. 26:90(B)(4) and 286(B)(4))