

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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HOUSE BILL 1120

Short Title: Fight Exploitation Funding Act (FEFA). (Public)

Sponsors: Representatives Hanig and Moss (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

May 31, 2022

A BILL TO BE ENTITLED
AN ACT REQUIRING A NOMINAL ADMISSION FEE ON ADULT LIVE
ENTERTAINMENT BUSINESSES TO BE REMITTED QUARTERLY TO THE
DEPARTMENT OF REVENUE AND DEPOSITED INTO THE NORTH CAROLINA
HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION GRANT FUND
AND CREATING THE NORTH CAROLINA HUMAN TRAFFICKING AND CHILD
EXPLOITATION PREVENTION GRANT FUND FOR THE BENEFIT OF
GOVERNMENT ENTITIES AND NONPROFITS THAT ARE WORKING TO PROVIDE
ASSISTANCE TO VICTIMS OF HUMAN TRAFFICKING AND SEXUAL
EXPLOITATION.

Whereas, the United States Supreme Court held in *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), that expressive conduct in nude dancing falls only within the outer ambit of the First Amendment's protection and that regulations designed to curb the deleterious effects caused by the presence of a live adult entertainment establishment in a neighborhood do not offend the First Amendment; and

Whereas, informed by the United States Supreme Court's decisions in *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), and *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), the Texas Supreme Court in *Combs v. Texas Entertainment Association, Inc.*, 347 S.W.3d 277 (Tex. 2011), held that a state statute that imposes a five-dollar admission fee on live adult entertainment establishments is constitutional under the First Amendment because the fee is:

- (1) Nominal and de minimis;
- (2) Content-neutral and satisfies the four-part of the *O'Brien* test set forth by the United States Supreme Court in *United States v. O'Brien*, 391 U.S. 367 (1968);
- (3) Not aimed at any expressive content of nude dancing but at the secondary effects of the expression in the presence of the aggravating factor of alcohol; and

Whereas, because the erotic dancing at adult live entertainment businesses in North Carolina is of the same licentious character as the adult live entertainment businesses at issue in cases before the United States Supreme Court, such as *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), and *California v. LaRue*, 409 U.S. 109 (1972), the General Assembly concludes that such erotic dancing is likely producing the same secondary effects in the State of North Carolina and intends to combat those secondary effects by enacting the Fight Exploitation Funding Act (FEFA); and



Whereas, the United States Supreme Court in *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), held that a "time, place, and manner" zoning restriction on an adult business does not violate the First Amendment if it is aimed not at the content of adult entertainment, but at the secondary effects of sexually oriented businesses on the surrounding community, and if the restriction is "designed to prevent crime, protect the city's retail trade, maintain property values, and generally protect and preserve the quality of the city's neighborhoods, commercial districts, and the quality of urban life, not to suppress the expression of unpopular views." Accordingly, the Fight Exploitation Funding Act (FEFA) is:

- (1) Aimed at offsetting the costs of sexual assault, prostitution, disorderly conduct, human trafficking, and a variety of other crimes and social ills encouraged and promoted by adult live entertainment businesses that serve alcohol;
- (2) Enacted pursuant to the State's inherent police powers afforded to the State of North Carolina in view of the Tenth Amendment of the United States Constitution to protect the health, safety, morals, and general welfare of its inhabitants;
- (3) Not purposed to suppress the expression of unpopular views; and

Whereas, the legislature recognizes that there are a number of nonprofit organizations that incur great expense to provide assistance to victims of human trafficking and child exploitation and to promote awareness and that permitting these types of nonprofit organizations access to grant funding through the North Carolina Human Trafficking and Child Exploitation Prevention Grant Fund would substantially further, strengthen, and advance compelling State interests, while easing the burden on law enforcement; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. This act may be cited and referred to as the "Fight Exploitation Funding Act (FEFA)."

SECTION 2. Subchapter I of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 2E.

"Adult Live Entertainment Business Fee.

"§ 105-113.201. Definitions.

The following definitions apply in this Article:

- (1) Department. – The Department of Revenue.
- (2) Adult live entertainment business. – Defined in G.S. 14-202.10.

"§ 105-113.202. Adult live entertainment business fee.

(a) Findings. – The General Assembly finds and determines that adult live entertainment businesses that combine nudity with the aggravating factor of alcohol can and do cause secondary harmful effects on the public's health, safety, and welfare. The General Assembly further finds that a nominal fee imposed on these businesses pursuant to the State's police powers to be used to combat or ameliorate adverse secondary impacts and that is not aimed at any expressive content is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) Fee Imposed. – A fee is imposed on an adult live entertainment business that has an alcohol permit issued under Chapter 18B of the General Statutes in an amount equal to five dollars (\$5.00) for each entry by each customer admitted to the business. An adult live entertainment business is not required to impose the fee on a customer of the business. This fee is in addition to all other applicable fees and taxes.

(c) Remission of Fee; Reporting. – An adult live entertainment business shall, on a quarterly basis, remit the fee imposed under this Article to the Department in the manner prescribed by the Secretary and shall file a report with the Department in the manner and containing the information required by the Secretary.

(d) Recordkeeping. – An adult live entertainment business shall record daily in the manner required by the Department the number of customers admitted to the business. An adult live entertainment business shall maintain the records for the period required by the Department and make the records available only for inspection and audit on request by the Department. The records shall not contain the names or personal information of any of the customers.

(e) Distribution and Use. – The Secretary shall remit the proceeds of the fee to the State Treasury to be deposited into the North Carolina Human Trafficking and Child Exploitation Prevention Grant Fund established under G.S. 7A-354.1 to be used in accordance with that section."

SECTION 3. Article 29 of Chapter 7A of the General Statutes is amended by adding a new section as follows:

"§ 7A-354.1. North Carolina Human Trafficking and Child Exploitation Prevention Grant Fund.

(a) Fund Established. – The Human Trafficking and Child Exploitation Prevention Grant Fund is established within the State Treasury. The fund shall be administered by the Administrative Office of the Courts, North Carolina Human Trafficking Commission, and shall be used to make grants for the purpose of providing programs or services that combat human trafficking or assist victims of human trafficking or sex offenses, including awareness and prevention, counseling, victim advocacy, shelters or housing, legal advocacy, physical and mental health services, and job placement and training. This fund shall be administered in accordance with the provisions of the State Budget Act under Chapter 143C of the General Statutes. The fund shall consist of the adult live entertainment business fee collected by the Department of Revenue under Article 2E of Chapter 105 of the General Statutes and any other appropriations, gifts, grants, donations, and bequests.

(b) Eligibility and Administration. – The Administrative Office of the Courts shall determine eligibility requirements for grants awarded under this section and develop guidelines to administer and implement the grant program. At a minimum, the eligibility requirements must require grant recipients to meet all of the following conditions:

- (1) Be a local government entity or a nonprofit organization.
- (2) Have been in operation on the preceding July 1 and continue to be in operation.
- (3) Act in support of victims of human trafficking or offenses involving sexual exploitation.
- (4) Offer minimum services for a period of time before receiving a grant and to continue to offer minimum services during the grant period.
- (5) Submit financial and programmatic reports.

(c) Report. – The Administrative Office of the Courts, North Carolina Human Trafficking Commission, shall evaluate activities conducted under this section each year and, on or before February 15, submit an annual report containing all of the following information to the Justice and Public Safety Oversight Committee and the Fiscal Research Division of the General Assembly:

- (1) The amount of fees received under G.S. 105-113.202.
- (2) The manner in which the funds in the fund were distributed.
- (3) The manner in which each entity receiving a grant used the grant money."

SECTION 4. This act becomes effective July 1, 2023.