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AMENDMENT TO THE CONSTITUTION OF THE STATE OF GEORGIA

Article III. Legislative Branch, Section VI. Exercise of Powers: Provide Georgia Complete Authority to Regulate Alcoholic Beverages in Any Manner Permitted Under the Twenty-First Amendment to the United States Constitution

CODE SECTION:	GA. CONST. art. III, § VI, ¶ VII (new)
RESOLUTION NUMBER:	HR 709
ACT NUMBER:	115
SUMMARY:	The General Assembly passed this resolution during its 1994 session, but the voters of Georgia must ratify the legislation in a statewide referendum in November 1994 in order for the resolution to become an amendment to the Georgia Constitution. The amendment gives the Georgia General Assembly full authority under the federal Twenty-First Amendment to the United States Constitution to regulate public nudity in combination with alcoholic beverage sales.
EFFECTIVE DATE:	January 1, 1995, if ratified.

History

HR 709 was introduced to settle what the resolution's sponsor considered "an unresolved issue."[1] Representative Gail Buckner, the sponsor, said she felt frustrated when the Georgia Supreme Court held unconstitutional a 1988 state law attempting to regulate nude dancing in combination with the sale of alcohol.[2] The invalid law had attempted to regulate nude dancing indirectly by regulating liquor sales in nude-dancing establishments.[3] The court decision which frustrated Buckner and other Georgia lawmakers, *Harris v. Entertainment Systems, Inc.*,[4] led to a proliferation of nude-dance clubs in Georgia.[5]

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1. Telephone Interview with Rep. Gail Buckner, House District 95 (Apr. 4, 1994) [hereinafter Buckner Interview]. Rep. Buckner was the chief sponsor of HR 709. *Id.*
2. *Id.; see* 1988 Ga. Laws 212 (formerly found at O.C.G.A. §§ 3-3-40 to -46 (1989)). This law was held unconstitutional in Harris v. Entertainment Sys., Inc., 386 S.E.2d 140 (Ga. 1989).
3. 1988 Ga. Laws 212 (formerly found at O.C.G.A. §§ 3-3-40 to -46 (1989)).
4. 386 S.E.2d 140 (Ga. 1989).
5. *Counties Need Legal Clout To License Nude-Dance Clubs*, ATLANTA J., Feb. 12, 1993, at A12.

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All four sponsors of HR 709 represent House districts which include sections of Forest Park, Georgia, and neighboring areas.[6] Interest in the regulation of nude dancing intensified in the Forest Park area when entrepreneurs began efforts to open a nude-dance establishment in Forest Park.[7] Despite the efforts of angry citizens who organized in opposition to the opening of the nude-dance club,[8] the Crazy Horse Saloon opened in the fall of 1993.[9]

Mayor Jerry Tomasello and members of the City Council of Forest Park felt powerless to stop the opening, asserting that "their hands were tied" by the Georgia Supreme Court decision.[10] Angry voters turned Mayor Tomasello and the entire incumbent city council out of office in November 1993.[11]

HR 709 was introduced for two reasons: (1) as a response to the opening of a nude-dance club in Forest Park, Georgia; and (2) as an attempt to authorize local governments throughout Georgia to regulate public nudity in combination with sales of alcoholic beverages.[12]

Regulation of public nudity in Georgia has proved particularly difficult for lawmakers because the state's constitution lacks an equivalent to the federal Twenty-First Amendment.[13] The Twenty-First Amendment, passed in 1933 to end Prohibition, delegates alcohol-regulating authority to the states.[14] Laws regulating public nudity in combination with alcohol sales, enacted by states with Twenty-First Amendment equivalents in their constitutions, have survived scrutiny by the United States Supreme Court.[15] Georgia lawmakers, seeking a

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6. The sponsors of HR 709 were: Rep. Gail Buckner, House District No. 95; Rep. Bill Lee, House District No. 94; Rep. Frank Bailey, House District No. 93; and Rep. Jimmy Benefield, House District No. 96.

7. Buckner Interview, *supra* note 1.

8. Linda Angel, Forest Park resident, helped to form Citizens Concerned "to oppose nude dancing." Judy Bailey, *Group Closer to City License for Nude Club; Council Still Must Approve Zoning Change on Location*, ATLANTA J., June 3, 1993, at I1.

9. Buckner Interview, *supra*, note 1.

10. *Id.*

11. *Id.*; Telephone Interview with Rep. Jimmy Benefield, House District No. 96 (Apr. 4, 1994) [hereinafter Benefield Interview]; Telephone Interview with Rep. Frank Bailey, House District No. 93 (Apr. 4, 1994) [hereinafter Bailey Interview].

12. Buckner Interview, *supra* note 1; *Legislative Briefs: Constitutional Amendment to Regulate Liquor Sales Is Proposed*, ATLANTA J., Feb. 3, 1994 at I4 [hereinafter *Legislative Briefs*].

13. *See* Harris v. Entertainment Sys., Inc., 386 S.E.2d 140 (Ga. 1989).

14. The Twenty-First Amendment provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." U.S. CONST. amend XXI, § II.

15. *See* New York State Liquor Auth. v. Bellanca, 452 U.S. 714 (1981); California v. LaRue, 409 U.S. 109 (1972).

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solution after previous attempts at nude-dancing regulation were struck down on constitutional grounds by the Georgia Supreme Court, approved HR 709 to "ask the people of Georgia to do something [about nude dancing] by changing the state constitution."[16]

HR 709

Georgians are scheduled to vote in a November 1994 referendum in which, the sponsor predicted, the proposed amendment to the state constitution will be approved.[17] Ratification of the amendment would give Georgia full authority to regulate public nudity in combination with alcohol sales, subject only to the Twenty-First Amendment of the United States Constitution.[18] A new Paragraph VII would be inserted in the state constitution's delineation of the legislative branch's exercise of powers.[19]

The language of the proposed Paragraph VII was set out in section one of HR 709, specifically granting regulatory authority to both county and municipal governments.[20] Furthermore, the purpose of this delegation of authority is defined as "regulating . . . nudity, partial nudity, or depictions of nudity in connection with the sale or consumption of alcoholic beverages . . . ."[21]

The second section of HR 709 provides for the November 1994 referendum.[22] Voters will decide whether the state constitution will be amended to allow regulation of alcoholic beverages in combination with nudity, "such as in nude dance clubs."[23]

The original version of HR 709, as introduced in the House by Representative Gail Buckner, sought to grant alcohol-regulating authority to the state by allowing the state to "impose regulations . . . similar to those contained in an Act of the General Assembly approved March 15, 1988."[24] The Act cited was a 1988 attempt at regulation of alcohol in combination with nude dancing, struck down by the Georgia Supreme Court in *Harris*.[25]

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16. Telephone Interview with Rep. Bill Lee, House District No. 94 (Apr. 4, 1994).
17. *See Legislative Briefs, supra* note 12. Passage in the House of Representatives was the "big hurdle," said the resolution's sponsor, Rep. Gail Buckner, House District No. 95. "I'm sure . . . the people will ratify it." *Id.*
18. HR 709, as passed, 1994 Ga. Gen. Assem.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. HR 709, as introduced, 1994 Ga. Gen. Assem.; *see* 1988 Ga. Laws 212.
25. 1988 Ga. Laws 212 (formerly found at O.C.G.A. §§ 3-3-40 to -46 (1988)); Harris v. Entertainment Sys., Inc., 386 S.E.2d 140 (Ga. 1989).

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The House Committee on Regulated Beverages,[26] much to the dismay of the sponsors of HR 709,[27] removed all references to nude dancing.[28] The sponsors charged that the Committee substitute weakened the resolution.[29] Opponents of the resolution argued that the absence of references to nude dancing produced a more "constitutionally sound" piece of legislation.[30]

In response to the committee's action,[31] a floor amendment was specifically proposed in the House.[32] The amendment passed overwhelmingly.[33] The floor amendment granted to counties and municipalities the authority to regulate nudity in combination with alcohol sales.[34] The floor amendment also included a specific reference to "nude dance clubs" in the referendum ballot to be submitted to the people of Georgia in November.[35]

The House version was the final version of the bill.[36]

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26. HR 709 (HCS), 1994 Ga. Gen. Assem. Rep. Buckner said that Rep. Robert Reichert, House District No. 126, was influential in drafting the committee substitute to HR 709. Buckner Interview, *supra* note 1.

27. Buckner Interview, *supra* note 1; Benefield Interview, *supra* note 11; Bailey Interview, *supra* note 11.

28. *See* HR 709 (HCS), 1994 Ga. Gen. Assem.

29. Bailey Interview, *supra* note 11; Buckner Interview, *supra* note 1.

30. Mary Louise Kelly, *'94 Georgia Legislature: House Passes Nude Club Bill*, ATLANTA J., Feb. 18, 1994, at E1.

31. Buckner Interview, *supra* note 1.

32. HR 709 (HCSFA), 1994 Ga. Gen. Assem.

33. Kelly, *supra* note 30.

34. HR 709 (HCSFA), 1994 Ga. Gen. Assem. This provision, like the Act, is subject to passage of the referendum in November 1994. *See supra* notes 17-21 and accompanying text.

35. HR 709 (HCSFA), 1994 Ga. Gen. Assem.; *see also supra* notes 22-23 and accompanying text.

36. *See* 1994 Ga. Laws 2018.

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