As Reported by the House Civil and Commercial Law Committee

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Sub. H. B. No. 428

Representatives Reidelbach, Seitz, Schaffer, McGregor, Flowers, Fessler, Brinkman, Wagner, C. Evans, Schmidt, Collier, Aslanides, Young, Price, Allen, Strahorn

A B I L L

To amend sections 303.02, 503.29, 519.02, 2505.08, 2506.01, 2506.02, 2506.03, 2506.04, and 2907.01, to amend, for the purpose of adopting a new section number as indicated in parentheses, section 503.29 (503.53), to enact new sections 503.51 and 503.52 and sections 2506.05, 2506.06, 2506.07, 2506.08, 2907.38, 3768.01, 3768.02, 3768.03, 3768.04, 3768.05, 3768.06, and 3768.99, and to repeal sections 503.51, 503.52, 503.53, 503.54, 503.55, 503.56, 503.57, 503.58, 503.59, 503.65, and 503.99 of the Revised Code to generally regulate adult entertainment establishments; to permit townships to regulate the location and operation of those establishments; to create an expedited appeal from orders, adjudications, or decisions denying an application for, or suspending or revoking, a license or permit to locate or operate such an establishment; to create an expedited appeal in any case in which a court determines there is a threat of restraint of protected expression; and to create the offense of permitting unlawful operation of viewing booths depicting sexual
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 303.02, 503.29, 519.02, 2505.08, 2506.01, 2506.02, 2506.03, 2506.04, and 2907.01 be amended, section 503.29 (503.53) be amended for the purpose of adopting a new section number as indicated in parentheses, and new sections 503.51 and 503.52 and sections 2506.05, 2506.06, 2506.07, 2506.08, 2907.38, 3768.01, 3768.02, 3768.03, 3768.04, 3768.05, 3768.06, and 3768.99 of the Revised Code be enacted to read as follows:

Sec. 303.02. (A) For the purpose of promoting the public health, safety, and morals, the board of county commissioners may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures including tents, cabins, and trailer coaches and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such county, and for such purposes may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform, for each class or kind of building or other structure or use, throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

(B) A board of county commissioners that pursuant to this chapter regulates adult entertainment establishments, as defined...
in section 3768.01 of the Revised Code, may modify its administrative zoning procedures with regard to adult entertainment establishments as the board determines necessary to ensure that the procedures comply with all applicable constitutional requirements.

**Sec. 503.51.** As used in this section and sections 503.52 and 503.53 of the Revised Code, "adult arcade," "adult bookstore," "adult novelty store," "adult video store," "adult cabaret," "adult entertainment establishment," "adult motion picture theater," "adult theater," "distinguished or characterized by their emphasis upon," "nude or seminude model studio," "nudity," "nude," "state of nudity," "regularly features," "regularly shown," "seminude," "state of seminudity," "sexual encounter establishment," "specified anatomical areas," and "specified sexual activity" have the same meanings as in section 3768.01 of the Revised Code.

**Sec. 503.52.** (A) A board of township trustees, by resolution, may regulate the operation of adult entertainment establishments. Those regulations may include, but are not limited to, antinudity restrictions, limitations on hours of operation, interior configuration requirements, and requirements that adult entertainment establishments and their employees obtain licenses or permits to operate as or to be employed by an adult entertainment establishment. Those regulations shall not be in conflict with any provision in Chapter 4303. of the Revised Code, or with any rule adopted by the division of liquor control pursuant to that chapter, that regulates establishments that hold a liquor permit.

(B) A board of township trustees that has adopted a resolution under division (A) of this section may provide for
criminal and civil sanctions for adult entertainment establishments that violate regulations established by the township under the resolution. All proceeds from criminal and civil sanctions shall be applied initially to the payment of costs incurred in the prosecution and enforcement of the resolution adopted under division (A) of this section, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the county or township.

(C)(1) When it appears that a resolution adopted under division (A) of this section or section 503.53 of the Revised Code is being or is about to be violated, the legal counsel of the township in which the violation is taking place may commence a civil action to enjoin the violation.

(2) The legal counsel of a township may commence a civil action under Chapter 3767. of the Revised Code to abate as a nuisance any place in the unincorporated area of the township at which a resolution adopted under division (A) of this section or section 503.53 of the Revised Code is being or has been violated. All proceeds from the sale of personal property or contents seized pursuant to the action shall be applied initially to the payment of costs incurred in the prosecution of the action and the costs associated with the abatement and sale ordered under division (A) of section 3767.06 of the Revised Code, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the county or township. Any proceeds remaining after that initial application shall be deposited into the township treasury and credited to the general fund.

Sec. 503.29 503.53. (A) Resolutions of the type described in division (B)(A) of section 503.65 503.52 of the Revised Code may be proposed by initiative petition by the electors of a township and adopted by election by these electors, under the same
circumstances, in the same manner, and subject to the same penalties as provided in sections 731.28 to 731.40 and section 731.99 of the Revised Code for ordinances and other measures of municipal corporations, insofar as those sections are applicable to townships, except as follows:

(A)(1) The board of township trustees shall perform the duties imposed on the legislative authority of the municipal corporation under those sections.

(B)(2) Initiative petitions shall be filed with the township clerk, who shall perform the duties imposed under those sections upon the city auditor or village clerk.

(C)(3) Initiative petitions shall contain the signatures of electors of the township equal in number to at least ten per cent of the total vote cast in the township for the office of governor at the most recent general election for that office.

(D)(4) Each signer of an initiative petition shall be an elector of the township in which the election on the proposed resolution is to be held.

(B) A resolution proposed under division (A) of this section may provide for the following:

(1) Modification of the administrative procedures, including administrative zoning procedures, of the township as those procedures apply to adult entertainment establishments to ensure that constitutional requirements are met;

(2) Criminal and civil sanctions for adult entertainment establishments that violate regulations established by the resolution.

Sec. 519.02. (A) For the purpose of promoting the public health, safety, and morals, the board of township trustees may in
accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such township, and for such purposes may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

(B) A board of township trustees that pursuant to this chapter regulates adult entertainment establishments, as defined in section 3768.01 of the Revised Code, may modify its administrative zoning procedures with regard to adult entertainment establishments as the board determines necessary to ensure that the procedures comply with all applicable constitutional requirements.

Sec. 2505.08. In the case of an administrative-related appeal other than an expedited appeal brought under sections 2506.05 to 2506.08 of the Revised Code, within forty days after the filing of a notice of appeal or the obtaining of a leave to appeal, as described in section 2505.04 of the Revised Code, the administrative officer, agency, board, department, tribunal, commission, or other instrumentality whose final order is being appealed shall prepare and file in the court to which the appeal
is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order. The costs of the transcript shall be taxed as part of the costs of the appeal.

Sec. 2506.01. Every (A) Except as otherwise provided in sections 2506.05 to 2506.08 of the Revised Code, and except as modified by this section and sections 2506.02 to 2506.04 of the Revised Code, every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code, except as modified by this chapter.

(B) The appeal provided in this chapter section is in addition to any other remedy of appeal provided by law.

(C) As used in this chapter, "final order, adjudication, or decision" means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding.

Sec. 2506.02. Within forty days after filing the notice of appeal in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, shall prepare and file in
the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. The costs of such the transcript shall be taxed as a part of the costs of the appeal.

**Sec. 2506.03.** (A) The hearing of such an appeal taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code shall proceed as in the trial of a civil action, but the court shall be confined to the transcript as filed pursuant to under section 2506.02 of the Revised Code unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies:

1. The transcript does not contain a report of all evidence admitted or proffered by the appellant;

2. The appellant was not permitted to appear and be heard in person, or by his attorney, in opposition to the final order, adjudication, or decision appealed from, and to do any of the following:

   a. Present his position, arguments, and contentions;

   b. Offer and examine witnesses and present evidence in support;

   c. Cross-examine witnesses purporting to refute his position, arguments, and contentions;

   d. Offer evidence to refute evidence and testimony offered in opposition to his position, arguments, and contentions;

   e. Proffer any such evidence into the record, if the
admission of it is denied by the officer or body appealed from.  

(3) The testimony adduced was not given under oath.

(4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from or the refusal, after request, of such that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.

(5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision appealed from.

(B) If any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and such additional evidence as may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to such that party.

Sec. 2506.04. The If an appeal is taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.
Sec. 2506.05. (A)(1) Except as modified by this section and sections 2506.06 to 2506.08 of the Revised Code, every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state denying an application for, or suspending or revoking, a license or permit to locate or operate an adult entertainment establishment, as defined in section 3768.01 of the Revised Code or as similarly defined by a political subdivision, may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code.

(2) In addition to appeals brought pursuant to division (A)(1) of this section, a court of common pleas may hear appeals under this section and sections 2506.06 to 2506.08 of the Revised Code in cases in which the court determines that there is a threat of restraint of expression protected or presumptively protected under the First Amendment to the United States Constitution or under Section 11 of Article I, Ohio Constitution.

(B) An appellant seeking to have an appeal heard under this section shall designate it as an expedited appeal by inserting the words "Expedited Appeal Requested" in conspicuous typeface in the caption of the notice of appeal.

(C) In an appeal under this section, if the political subdivision does not object to the expedited appeal within three days of the filing of the notice of appeal or if, over the objection of the political subdivision, the court determines that there is a threat of restraint of expression protected or presumptively protected under the First Amendment of the United States Constitution or under Section 11 of Article I of the Ohio Constitution, the court shall conduct a hearing within fifteen
days after the date of the filing of the notice of appeal. The court shall render a decision within twenty days after the conclusion of the hearing. If the court denies the request for an expedited appeal, the appeal shall be heard in accordance with sections 2506.01 to 2506.04 of the Revised Code.

(D) The appeal provided in this section is in addition to any other remedy of appeal provided by law.

Sec. 2506.06. Within five days after filing a notice of appeal under section 2506.05 of the Revised Code, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. The costs of the transcript shall be taxed as a part of the costs of the appeal.

Sec. 2506.07. (A) The hearing of an appeal taken under section 2506.05 of the Revised Code shall proceed as in the trial of a civil action, but the court shall be confined to the transcript as filed under section 2506.06 of the Revised Code unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies:

(1) The transcript does not contain a report of all evidence admitted or proffered by the appellant.

(2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision appealed from, and to do any of the following:

(a) Present the appellant's position, arguments, and contentions;
(b) Offer and examine witnesses and present evidence in support;

(c) Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions;

(d) Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions;

(e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.

(3) The testimony adduced was not given under oath.

(4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.

(5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision appealed from.

(B) If any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and additional evidence as may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party.

Sec. 2506.08. If an appeal is taken under section 2506.05 of the Revised Code, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or
modify the order, adjudication, or decision, or remand the cause
to the officer or body appealed from with instructions to enter an
order, adjudication, or decision consistent with the findings or
opinion of the court. If the order, adjudication, or decision is
remanded to the officer or body appealed from with those
instructions, the officer or body shall enter the consistent
order, adjudication, or decision within five days after that
remand. The judgment of the court may be appealed by any party on
questions of law as provided in the Rules of Appellate Procedure
and, to the extent not in conflict with those rules, Chapter 2505.
of the Revised Code.

Sec. 2907.01. As used in sections 2907.01 to 2907.37 2907.38
of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male
and female; anal intercourse, fellatio, and cunnilingus between
persons regardless of sex; and, without privilege to do so, the
insertion, however slight, of any part of the body or any
instrument, apparatus, or other object into the vaginal or anal
cavity of another. Penetration, however slight, is sufficient to
complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone
of another, including without limitation the thigh, genitals,
buttock, pubic region, or, if the person is a female, a breast,
for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact,
or both.

(D) "Prostitute" means a male or female who promiscuously
engages in sexual activity for hire, regardless of whether the
hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material
or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of
sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "Spouse" means a person married to an offender at the
time of an alleged offense, except that such person shall not be
considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation
agreement authorized by section 3103.06 of the Revised Code;

(2) During the pendency of an action between the parties for
annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the
effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient" has the same meaning as
in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in
section 2305.115 of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by
or upon a person or the condition of being fettered, bound, or
otherwise physically restrained.

Sec. 2907.38. (A) As used in this section:

(1) "Commercial establishment" means an entity that is open
to the public and to which either of the following applies:

(a) It has a substantial or significant portion of its stock
in trade of the sale, rental, or viewing of visual materials or
performances depicting sexual conduct.

(b) It has as a principal business purpose the sale, rental,
or viewing of visual materials or performances depicting sexual
conduct.

(2) "Visual materials or performances" means films, videos,
CD-ROM discs, streaming video, or other motion pictures.

(B) No person who has custody, control, or supervision of a
commercial establishment, with knowledge of the character of the visual material or performance involved, shall knowingly permit the use of, or offer the use of, viewing booths, stalls, or partitioned portions of a room located in the commercial establishment for the purpose of viewing visual materials or performances depicting sexual conduct unless both of the following apply:

(1) The inside of each booth, stall, or partitioned room is visible from, and at least one side of each booth, stall, or partitioned room is open to, a continuous and contiguous main aisle or hallway that is open to the public areas of the commercial establishment and is not obscured by any curtain, door, or other covering or enclosure.

(2) No booth, stall, or partitioned room is designed, constructed, pandered, or allowed to be used for the purpose of encouraging or facilitating nudity or sexual activity on the part of or between patrons or members of the public, and no booth, stall, or partitioned room has any aperture, hole, or opening for the purpose of encouraging or facilitating nudity or sexual activity.

(C) It is an affirmative defense to a charge under this section that either of the following applies to the involved visual materials or performances:

(1) The visual materials or performances depicting sexual conduct are disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose and by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the visual materials or performances.
(2) The visual materials or performances depicting sexual conduct, taken as a whole, would be found by a reasonable person to have serious literary, artistic, political, or scientific value or are presented or disseminated in good faith for a serious literary, artistic, political, or scientific purpose and are not pandered for their prurient appeal.

(D) Whoever violates this section is guilty of permitting unlawful operation of viewing booths depicting sexual conduct, a misdemeanor of the first degree.

Sec. 3768.01. As used in this chapter:

(A) "Adult arcade" means any place to which the public is permitted or invited in which coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and in which the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.

(B)(1) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental of any of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are
characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas;

(b) Instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of self or others.

(2) An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store, or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas.

(C) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

(1) Persons who appear in a state of nudity or seminudity;

(2) Live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities;

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

(D) "Adult entertainment" means the sale, rental, or exhibition, for any form of consideration, of books, films, video
cassettes, magazines, periodicals, or live performances that are characterized by an emphasis on the exposure or display of specified anatomical areas or specified sexual activity.

(E) "Adult entertainment establishment" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment. An establishment in which a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated pursuant to section 4731.15 of the Revised Code, is not an "adult entertainment establishment."

(F) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

(G) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

(H) "Distinguished or characterized by their emphasis upon" means the dominant or principal character and theme of the object described by this phrase. For instance, when the phrase refers to films "that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities"
or specified anatomical areas," the films so described are those
whose dominant or principal character and theme are the exhibition
or description of specified sexual activities or specified
anatomical areas.

(I)(1) "Nude or seminude model studio" means any place where
a person, who regularly appears in a state of nudity or
seminudity, is provided for money or any other form of
consideration to be observed, sketched, drawn, painted,
sculptured, photographed, or similarly depicted by other persons.

(2) A modeling class or studio is not a nude or seminude
model studio and is not subject to this chapter if it is operated
in any of the following ways:

(a) By a college or university supported entirely or partly
by taxation;

(b) By a private college or university that maintains and
operates educational programs, the credits for which are
transferable to a college or university supported entirely or
partly by taxation;

(c) In a structure to which all of the following apply:

(i) It has no sign visible from the exterior of the structure
and no other advertising indicating that a person appearing in a
state of nudity or seminudity is available for viewing.

(ii) In order to participate in a class in the structure, a
student must enroll at least three days in advance of the class.

(iii) Not more than one nude or seminude model is on the
premises at any one time.

(J) "Nudity," "nude," or "state of nudity" means the showing
of the human male or female genitals, pubic area, vulva, anus,
anal cleft, or cleavage with less than a fully opaque covering; or
the showing of the female breasts with less than a fully opaque
covering of any part of the nipple.

(K) "Regularly features" or "regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult entertainment establishment.

(L) "Seminude" or "state of seminudity" means a state of dress in which opaque clothing covers not more than the genitals, pubic region, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

(M)(1) "Sexual encounter establishment" means a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur:

   (a) Two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities.

   (b) Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form.

   (2) An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated pursuant to section 4731.15 of the Revised Code, is not a "sexual encounter establishment."

(N) "Specified anatomical areas" means the cleft of the buttocks, anus, male or female genitals, or the female breast.

(O) "Specified sexual activity" means any of the following:

   (1) Sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;
(2) Excretory functions as a part of or in connection with any of the activities described in division (O)(1) of this section.

Sec. 3768.02. (A) No person knowingly shall allow an individual, including, but not limited to, a patron, customer, or employee, who is under eighteen years of age on the premises of an adult entertainment establishment.

(B) No individual who is under eighteen years of age knowingly shall show or give false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment.

(C) A person shall not be found guilty of a violation of division (A) of this section if the person raises as an affirmative defense and if the jury or, in a nonjury trial, the court finds the person has established by a preponderance of the evidence, all of the following:

(1) The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent, or independent contractor of the adult entertainment establishment a driver's or commercial driver's license or an identification card issued under sections 4507.50 and 4507.52 of the Revised Code showing that the individual was then at least eighteen years of age.

(2) The operator, employee, agent, or independent contractor made a bona fide effort to ascertain the true age of the individual gaining entrance to the adult entertainment establishment by checking the identification presented, at the time of entrance, to ascertain that the description on the identification compared with the appearance of the individual and
that the identification had not been altered in any way.

(3) The operator, employee, agent, or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least eighteen years of age.

(D) In any criminal action in which the affirmative defense described in division (C) of this section is raised, the registrar of motor vehicles or the deputy registrar who issued a driver's or commercial driver's license or an identification card under sections 4507.50 and 4507.52 of the Revised Code shall be permitted to submit certified copies of the records, in the registrar's or deputy registrar's possession, of the issuance of the license or identification card in question, in lieu of the testimony of the personnel of the bureau of motor vehicles in the action.

Sec. 3768.03. No adult entertainment establishment shall be open for business at any time before ten a.m. or after eleven p.m., except that an adult entertainment establishment that holds a liquor permit pursuant to Chapter 4303. of the Revised Code may remain open pursuant to the terms of the permit but may not conduct adult entertainment during the hours granted by the permit that are before ten a.m. or after eleven p.m. except for performances by persons who appear in a state of seminudity and not in a state of nudity.

Sec. 3768.04. The following requirements shall apply to an adult entertainment establishment that regularly features persons who appear in a state of nudity or seminudity or that regularly features live performances characterized by their emphasis upon the display or simulation of specified sexual activities:

(A) No person, while nude, knowingly shall do any of the
following:

(1) Appear in the view of any patron, customer, or client unless the person remains at least six feet from the patron, customer, or client and on a stage at least two feet above the floor;

(2) Receive any pay or gratuity directly from any patron, customer, or client;

(3) Touch any patron, customer, or client, or the clothing of any patron, customer, or client.

(B) No person, while on the premises of this type of adult entertainment establishment, knowingly shall do any of the following:

(1) Give any pay or gratuity directly to another person who is nude;

(2) Touch any person while that person is nude, or touch the clothing or costume of any person while that person is nude or seminude.

(C) No owner, manager, agent or designee of an owner or manager, or employee of an adult entertainment establishment shall knowingly permit any person, regardless of whether the person was hired or engaged as an employee or independent contractor, to violate division (A) or (B) of this section.

(D) Nothing in this section prohibits a patron, customer, or client from indirectly giving any pay or gratuity to another person who is nude or seminude, such as placing the pay or gratuity in a tip jar.

Sec. 3768.05. (A) If an alleged violation of this chapter has occurred or is occurring, the attorney general, the prosecuting attorney of the county, the city director of law, village
solicitor, or other similar chief legal officer of the municipal
corporation, or the township law director may commence a civil
action in the court of common pleas of the county in which the
violation has occurred or is occurring for injunctive relief
against the person who has violated or is violating this chapter.
The court of common pleas has jurisdiction to grant, and shall
grant, temporary and permanent injunctive relief upon a showing
that the person against whom the action is brought has violated or
is violating this chapter.

(B) Premises used or occupied for repeated violations of this
chapter constitute a nuisance subject to abatement pursuant to
sections 3767.01 to 3767.99 of the Revised Code.

(C) This chapter does not affect legal or equitable causes of
action or remedies, under common law or statute to abate nuisances
or prevent the state or any municipal corporation, township, or
person from exercising equitable rights under common law or
statute to abate nuisances.

Sec. 3768.06. Nothing in this chapter preempts or prevents
political subdivisions in this state from adopting or enforcing
additional lawful and reasonable restrictions, licensing
requirements, zoning or other regulations, or other civil or
administrative provisions pertaining to the location,
configuration, code compliance, or other aspects of the business
operations of adult entertainment establishments except that those
regulations shall not be in conflict with any provision in Chapter
4303. of the Revised Code, or with any rule adopted by the
division of liquor control pursuant to that chapter, that
regulates establishments that hold a liquor permit.

Sec. 3768.99. (A) Whoever violates division (A) of section
3768.02, section 3768.03, or section 3768.04 of the Revised Code
is guilty of a misdemeanor of the first degree. Each day a person violates any of these divisions constitutes a separate offense.

(B) Whoever violates division (B) of section 3768.02 of the Revised Code is guilty of a misdemeanor of the fourth degree.

Section 2. That existing sections 303.02, 503.29, 519.02, 2505.08, 2506.01, 2506.02, 2506.03, 2506.04, and 2907.01 and sections 503.51, 503.52, 503.53, 503.54, 503.55, 503.56, 503.57, 503.58, 503.59, 503.65, and 503.99 of the Revised Code are hereby repealed.

Section 3. In enacting sections 3768.01, 3768.02, 3768.03, 3768.04, 3768.05, 3768.06, and 3768.99 of the Revised Code, the General Assembly makes the following statement of intent and findings:

(A)(1) Adult entertainment establishments require special supervision from the public safety agencies of this state in order to protect and preserve the health, safety, morals, and welfare of the patrons and employees of the businesses as well as the citizens of this state.

(2) The General Assembly finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.

(3) The concern over sexually transmitted diseases is a legitimate health concern of this state that demands reasonable regulation of adult entertainment establishments in order to protect the health and well-being of the citizens.

(4) Minimal regulations are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be
used as places of illegal sexual activity or solicitation.

(5) There is convincing documented evidence that adult
entertainment establishments, because of their very nature, have a
deleterious effect on both the existing businesses around them and
the surrounding residential areas adjacent to them and cause
increased crime, particularly in the overnight hours, and the
downgrading of property values.

(6) The General Assembly desires to minimize and control
these adverse effects and by minimizing and controlling these
adverse effects to protect the health, safety, and welfare of the
citizenry; protect the citizens from increased crime; preserve the
quality of life; preserve the property values and character of
surrounding neighborhoods; and deter the spread of urban blight.

(7) The General Assembly has determined that local zoning and
other locational criteria alone do not adequately protect the
health, safety, and general welfare of the people of this state.

(8) It is not the intent of the General Assembly in enacting
this chapter to suppress any speech activities protected by the
First Amendment but to enact a content-neutral statute that
addresses the secondary effects of adult entertainment
establishments.

(9) It is not the intent of the General Assembly to condone
or legitimize the distribution of obscene material, and the
General Assembly recognizes that state and federal law prohibits
the distribution of obscene materials and expects and encourages
state law enforcement officials to enforce state obscenity
statutes against any such illegal activities in this state.

(B) It is the intent of the General Assembly in enacting
Chapter 3768. of the Revised Code to regulate adult entertainment
establishments in order to promote the health, safety, morals, and
general welfare of the citizens of this state and to establish
reasonable and uniform regulations to prevent the deleterious secondary effects of adult entertainment establishments within this state. The provisions of Chapter 3768. of the Revised Code have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of the General Assembly in enacting Chapter 3768. of the Revised Code to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult entertainment and adult materials to their intended market. Neither is it the intent nor effect of the General Assembly in enacting Chapter 3768. of the Revised Code to condone or legitimize the distribution or exhibition of obscene material.

Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence, the General Assembly finds:

(1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no statewide mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of adult entertainment establishments, as defined in section 3768.01 of the Revised Code as adult theaters and cabarets, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows. The "couch dances" or "lap dances" that frequently occur in adult entertainment establishments featuring live nude or seminude dancers constitute or may constitute the offense of "engaging in prostitution" under section 2907.25 of the Revised Code.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.
(5) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments for the purpose of engaging in sexual activity within the premises of those adult entertainment establishments.

(6) Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.

(8) A total of 10,255 AIDS cases had been reported in Ohio as of January 1999. Ohio has required HIV case reporting since 1990, and the reported information shows 7,969 people living with (HIV) (4,213) and (AIDS) (3,756) in the state.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Ohio.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen. 33,613 cases were reported in 1982, and 45,200 cases were reported through November 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(12) The Surgeon General of the United States in his report
of October 22, 1986, has advised the American public that AIDS and 962
HIV infection may be transmitted through sexual contact, 963
intravenous drug abuse, and exposure to infected blood and blood 964
components, and from an infected mother to her newborn. 965

(13) According to the best scientific evidence, AIDS and HIV 966
infection, as well as syphilis and gonorrhea, are principally 967
transmitted by sexual acts. 968

(14) Sanitary conditions in some adult entertainment 969
establishments are unhealthy, in part, because the activities 970
conducted there are unhealthy, and, in part, because of the 971
unregulated nature of the activities and the failure of the owners 972
and the operators of the facilities to self-regulate those 973
activities and maintain those facilities. 974

(15) The findings noted in divisions (C)(1) to (14) of this 975
section raise substantial governmental concerns. 976

(16) Adult entertainment establishments have operational 977
characteristics that should be reasonably regulated in order to 978
protect those substantial governmental concerns. 979

(17) The enactment of Chapter 3768. of the Revised Code will 980
promote the general welfare, health, morals, and safety of the 981
citizens of this state. 982