

As Re-referred to the Senate Rules Committee

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Am. H. B. No. 23

**Representatives Reidelbach, Wolpert, Wagner, Flowers, McGregor, Faber,
Hood, Calvert, Taylor, Seitz, Raga, Schaffer, Fessler, White, Combs,
Brinkman, Allen, Webster, Barrett, Hartnett, DeGeeter, Gilb, Brown,
Otterman, Collier, Aslanides, Latta, Buehrer, Distel, C. Evans, Hagan, Hoops,
Law, Miller, Perry, Schneider, Seaver, Setzer, Strahorn, Williams**

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A B I L L

To amend sections 303.02, 503.29, 519.02, 2505.08, 1
2506.01, 2506.02, 2506.03, 2506.04, 2907.01, and 2
4301.25, to amend, for the purpose of adopting a 3
new section number as indicated in parentheses, 4
section 503.29 (503.53), to enact new sections 5
503.51 and 503.52 and sections 2506.05, 2506.06, 6
2506.07, 2506.08, 2907.38, 3768.01, 3768.02, 7
3768.03, 3768.04, 3768.05, 3768.06, and 3768.99, 8
and to repeal sections 503.51, 503.52, 503.53, 9
503.54, 503.55, 503.56, 503.57, 503.58, 503.59, 10
503.65, and 503.99 of the Revised Code to 11
generally regulate adult entertainment 12
establishments; to permit townships to regulate 13
the location and operation of those 14
establishments; to create an expedited appeal from 15
orders, adjudications, or decisions denying an 16
application for, or suspending or revoking, a 17
license or permit to locate or operate such an 18
establishment; to create an expedited appeal in 19
any case in which a court determines there is a 20

threat of restraint of protected expression; and 21
to create the offense of permitting unlawful 22
operation of viewing booths depicting sexual 23
conduct. 24

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 303.02, 503.29, 519.02, 2505.08, 25 25
2506.01, 2506.02, 2506.03, 2506.04, 2907.01, and 4301.25 be 26
amended, section 503.29 (503.53) be amended for the purpose of 27
adopting a new section number as indicated in parentheses, and new 28
sections 503.51 and 503.52 and sections 2506.05, 2506.06, 2506.07, 29
2506.08, 2907.38, 3768.01, 3768.02, 3768.03, 3768.04, 3768.05, 30
3768.06, and 3768.99 of the Revised Code be enacted to read as 31
follows: 32

Sec. 303.02. (A) Except as otherwise provided in this 33
section, in the interest of the public health, safety, 34
convenience, comfort, prosperity, or general welfare, the board of 35
county commissioners may, in accordance with a comprehensive plan, 36
regulate by resolution the location, height, bulk, number of 37
stories, and size of buildings and other structures, including 38
tents, cabins, and trailer coaches, percentages of lot areas that 39
may be occupied, set back building lines, sizes of yards, courts, 40
and other open spaces, the density of population, the uses of 41
buildings and other structures, including tents, cabins, and 42
trailer coaches, and the uses of land for trade, industry, 43
residence, recreation, or other purposes in the unincorporated 44
territory of the county, and establish reasonable residential 45
landscaping standards and residential architectural standards, 46
excluding exterior building materials, for the unincorporated 47
territory of the county and, for all these purposes, the board may 48
divide all or any part of the unincorporated territory of the 49

county into districts or zones of such number, shape, and area as 50
the board determines. All such regulations shall be uniform for 51
each class or kind of building or other structure or use 52
throughout any district or zone, but the regulations in one 53
district or zone may differ from those in other districts or 54
zones. 55

For any activities permitted and regulated under Chapter 56
1509., 1513., or 1514. of the Revised Code and any related 57
processing activities, the board of county commissioners may 58
regulate under the authority conferred by this section only in the 59
interest of public health or safety. 60

(B) A board of county commissioners that pursuant to this 61
chapter regulates adult entertainment establishments, as defined 62
in section 3768.01 of the Revised Code, may modify its 63
administrative zoning procedures with regard to adult 64
entertainment establishments as the board determines necessary to 65
ensure that the procedures comply with all applicable 66
constitutional requirements. 67

Sec. 503.51. As used in this section and sections 503.52 and 68
503.53 of the Revised Code, "adult arcade," "adult bookstore," 69
"adult novelty store," "adult video store," "adult cabaret," 70
"adult entertainment establishment," "adult motion picture 71
theater," "adult theater," "distinguished or characterized by 72
their emphasis upon," "nude or seminude model studio," "nudity," 73
"nude," "state of nudity," "regularly features," "regularly 74
shown," "seminude," "state of seminudity," "sexual encounter 75
establishment," "specified anatomical areas," and "specified 76
sexual activity" have the same meanings as in section 3768.01 of 77
the Revised Code. 78

Sec. 503.52. (A) A board of township trustees, by resolution, 79

may regulate the operation of adult entertainment establishments. 80
Those regulations may include, but are not limited to, antinudity 81
restrictions, limitations on hours of operation, interior 82
configuration requirements, and requirements that adult 83
entertainment establishments and their employees obtain licenses 84
or permits to operate as or to be employed by an adult 85
entertainment establishment. Those regulations shall not be in 86
conflict with any provision in Chapter 4303. of the Revised Code, 87
or with any rule adopted by the division of liquor control 88
pursuant to that chapter, that regulates establishments that hold 89
a liquor permit. 90

(B) A board of township trustees that has adopted a 91
resolution under division (A) of this section may provide for 92
criminal and civil sanctions for adult entertainment 93
establishments that violate regulations established by the 94
township under the resolution. All proceeds from criminal and 95
civil sanctions shall be applied initially to the payment of costs 96
incurred in the prosecution and enforcement of the resolution 97
adopted under division (A) of this section, including, but not 98
limited to, court costs, reasonable attorney's fees, and other 99
litigation expenses incurred by the county or township. 100

(C)(1) When it appears that a resolution adopted under 101
division (A) of this section or section 503.53 of the Revised Code 102
is being or is about to be violated, the legal counsel of the 103
township in which the violation is taking place may commence a 104
civil action to enjoin the violation. 105

(2) The legal counsel of a township may commence a civil 106
action under Chapter 3767. of the Revised Code to abate as a 107
nuisance any place in the unincorporated area of the township at 108
which a resolution adopted under division (A) of this section or 109
section 503.53 of the Revised Code is being or has been violated. 110
All proceeds from the sale of personal property or contents seized 111

pursuant to the action shall be applied initially to the payment 112
of costs incurred in the prosecution of the action and the costs 113
associated with the abatement and sale ordered under division (A) 114
of section 3767.06 of the Revised Code, including, but not limited 115
to, court costs, reasonable attorney's fees, and other litigation 116
expenses incurred by the county or township. Any proceeds 117
remaining after that initial application shall be deposited into 118
the township treasury and credited to the general fund. 119

Sec. ~~503.29~~ 503.53. (A) Resolutions of the type described in 120
division ~~(B)~~(A) of section ~~503.65~~ 503.52 of the Revised Code may 121
be proposed by initiative petition by the electors of a township 122
and adopted by election by these electors, under the same 123
circumstances, in the same manner, and subject to the same 124
penalties as provided in sections 731.28 to 731.40 and ~~section~~ 125
731.99 of the Revised Code for ordinances and other measures of 126
municipal corporations, insofar as those sections are applicable 127
to townships, except as follows: 128

~~(A)~~(1) The board of township trustees shall perform the 129
duties imposed on the legislative authority of the municipal 130
corporation under those sections. 131

~~(B)~~(2) Initiative petitions shall be filed with the township 132
clerk, who shall perform the duties imposed under those sections 133
upon the city auditor or village clerk. 134

~~(C)~~(3) Initiative petitions shall contain the signatures of 135
electors of the township equal in number to at least ten per cent 136
of the total vote cast in the township for the office of governor 137
at the most recent general election for that office. 138

~~(D)~~(4) Each signer of an initiative petition shall be an 139
elector of the township in which the election on the proposed 140
resolution is to be held. 141

(B) A resolution proposed under division (A) of this section 142
may provide for the following: 143

(1) Modification of the administrative procedures, including 144
administrative zoning procedures, of the township as those 145
procedures apply to adult entertainment establishments to ensure 146
that constitutional requirements are met; 147

(2) Criminal and civil sanctions for adult entertainment 148
establishments that violate regulations established by the 149
resolution. 150

Sec. 519.02. (A) Except as otherwise provided in this 151
section, in the interest of the public health, safety, 152
convenience, comfort, prosperity, or general welfare, the board of 153
township trustees may, in accordance with a comprehensive plan, 154
regulate by resolution the location, height, bulk, number of 155
stories, and size of buildings and other structures, including 156
tents, cabins, and trailer coaches, percentages of lot areas that 157
may be occupied, set back building lines, sizes of yards, courts, 158
and other open spaces, the density of population, the uses of 159
buildings and other structures, including tents, cabins, and 160
trailer coaches, and the uses of land for trade, industry, 161
residence, recreation, or other purposes in the unincorporated 162
territory of the township, and establish reasonable residential 163
landscaping standards and residential architectural standards, 164
excluding exterior building materials, for the unincorporated 165
territory of the township; and, for all these purposes, the board 166
may divide all or any part of the unincorporated territory of the 167
township into districts or zones of such number, shape, and area 168
as the board determines. All such regulations shall be uniform for 169
each class or kind of building or other structure or use 170
throughout any district or zone, but the regulations in one 171
district or zone may differ from those in other districts or 172

zones. 173

For any activities permitted and regulated under Chapter 174
1509., 1513., or 1514. of the Revised Code and any related 175
processing activities, the board of township trustees may regulate 176
under the authority conferred by this section only in the interest 177
of public health or safety. 178

(B) A board of township trustees that pursuant to this 179
chapter regulates adult entertainment establishments, as defined 180
in section 3768.01 of the Revised Code, may modify its 181
administrative zoning procedures with regard to adult 182
entertainment establishments as the board determines necessary to 183
ensure that the procedures comply with all applicable 184
constitutional requirements. 185

Sec. 2505.08. In the case of an administrative-related appeal 186
other than an expedited appeal brought under sections 2506.05 to 187
2506.08 of the Revised Code, within forty days after the filing of 188
a notice of appeal or the obtaining of a leave to appeal, as 189
described in section 2505.04 of the Revised Code, the 190
administrative officer, agency, board, department, tribunal, 191
commission, or other instrumentality whose final order is being 192
appealed shall prepare and file in the court to which the appeal 193
is taken, a complete transcript of all the original papers, 194
testimony, and evidence offered, heard, and taken into 195
consideration in issuing the final order. The costs of the 196
transcript shall be taxed as part of the costs of the appeal. 197

Sec. 2506.01. ~~Every~~ (A) Except as otherwise provided in 198
sections 2506.05 to 2506.08 of the Revised Code, and except as 199
modified by this section and sections 2506.02 to 2506.04 of the 200
Revised Code, every final order, adjudication, or decision of any 201
officer, tribunal, authority, board, bureau, commission, 202

department, or other division of any political subdivision of the 203
state may be reviewed by the court of common pleas of the county 204
in which the principal office of the political subdivision is 205
located as provided in Chapter 2505. of the Revised Code, ~~except~~ 206
~~as modified by this chapter.~~ 207

(B) The appeal provided in this ~~chapter~~ section is in 208
addition to any other remedy of appeal provided by law. 209

~~A~~ (C) As used in this chapter, "final order, adjudication, or 210
decision" means an order, adjudication, or decision that 211
determines rights, duties, privileges, benefits, or legal 212
relationships of a person, but does not include any order, 213
adjudication, or decision from which an appeal is granted by rule, 214
ordinance, or statute to a higher administrative authority if a 215
right to a hearing on such appeal is provided, or any order, 216
adjudication, or decision that is issued preliminary to or as a 217
result of a criminal proceeding. 218

Sec. 2506.02. Within forty days after filing ~~the~~ a notice of 219
appeal in relation to a final order, adjudication, or decision 220
covered by division (A) of section 2506.01 of the Revised Code, 221
the officer or body from which the appeal is taken, upon the 222
filing of a praecipe by the appellant, shall prepare and file in 223
the court to which the appeal is taken, a complete transcript of 224
all the original papers, testimony, and evidence offered, heard, 225
and taken into consideration in issuing the final order, 226
adjudication, or decision ~~appealed from.~~ The costs of ~~such~~ the 227
transcript shall be taxed as a part of the costs of the appeal. 228

Sec. 2506.03. (A) The hearing of ~~such~~ an appeal taken in 229
relation to a final order, adjudication, or decision covered by 230
division (A) of section 2506.01 of the Revised Code shall proceed 231
as in the trial of a civil action, but the court shall be confined 232

to the transcript ~~as filed pursuant to~~ under section 2506.02 of 233
the Revised Code unless it appears, on the face of that transcript 234
or by affidavit filed by the appellant, that one of the following 235
applies: 236

(1) The transcript does not contain a report of all evidence 237
admitted or ~~proffered~~ proffered by the appellant~~7~~. 238

(2) The appellant was not permitted to appear and be heard in 239
person, or by ~~his~~ the appellant's attorney, in opposition to the 240
final order, adjudication, or decision ~~appealed from~~, and to do 241
any of the following: 242

(a) Present ~~his~~ the appellant's position, arguments, and 243
contentions; 244

(b) Offer and examine witnesses and present evidence in 245
support; 246

(c) Cross-examine witnesses purporting to refute ~~his~~ the 247
appellant's position, arguments, and contentions; 248

(d) Offer evidence to refute evidence and testimony offered 249
in opposition to ~~his~~ the appellant's position, arguments, and 250
contentions; 251

(e) Proffer any such evidence into the record, if the 252
admission of it is denied by the officer or body appealed from. 253

(3) The testimony adduced was not given under oath~~7~~. 254

(4) The appellant was unable to present evidence by reason of 255
a lack of the power of subpoena by the officer or body appealed 256
from~~7~~, or the refusal, after request, of ~~such~~ that officer or body 257
to afford the appellant opportunity to use the power of subpoena 258
when possessed by the officer or body~~7~~. 259

(5) The officer or body failed to file with the transcript~~7~~ 260
conclusions of fact supporting the final order, adjudication, or 261
decision ~~appealed from~~. 262

(B) If any circumstance described in divisions (A)(1) to (5) 263
of this section applies, the court shall hear the appeal upon the 264
transcript and ~~such~~ additional evidence as may be introduced by 265
any party. At the hearing, any party may call, as if on 266
cross-examination, any witness who previously gave testimony in 267
opposition to ~~such~~ that party. 268

Sec. 2506.04. ~~The~~ If an appeal is taken in relation to a 269
final order, adjudication, or decision covered by division (A) of 270
section 2506.01 of the Revised Code, the court may find that the 271
order, adjudication, or decision is unconstitutional, illegal, 272
~~arbitrary~~ arbitrary, capricious, unreasonable, or unsupported by 273
the preponderance of substantial, reliable, and probative evidence 274
on the whole record. Consistent with its findings, the court may 275
affirm, reverse, vacate, or modify the order, adjudication, or 276
decision, or remand the cause to the officer or body appealed from 277
with instructions to enter an order, adjudication, or decision 278
consistent with the findings or opinion of the court. The judgment 279
of the court may be appealed by any party on questions of law as 280
provided in the Rules of Appellate Procedure and, to the extent 281
not in conflict with those rules, Chapter 2505. of the Revised 282
Code. 283

Sec. 2506.05. (A)(1) Except as modified by this section and 284
sections 2506.06 to 2506.08 of the Revised Code, every final 285
order, adjudication, or decision of any officer, tribunal, 286
authority, board, bureau, commission, department, or other 287
division of any political subdivision of the state denying an 288
application for, or suspending or revoking, a license or permit to 289
locate or operate an adult entertainment establishment, as defined 290
in section 3768.01 of the Revised Code or as similarly defined by 291
a political subdivision, may be reviewed by the court of common 292
pleas of the county in which the principal office of the political 293

subdivision is located as provided in Chapter 2505. of the Revised Code. 294
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(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. 296
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(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. 303
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(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 as promptly as is practicable and render a decision in a prompt and expeditious manner consistent with the United States Constitution and the Ohio Constitution. 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. 307
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(D) The appeal provided in this section is in addition to any other remedy of appeal provided by law. 320
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Sec. 2506.06. Within five days after filing a notice of appeal under section 2506.05 of the Revised Code, the officer or 322
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body from which the appeal is taken, upon the filing of a praecipe 324
by the appellant, shall prepare and file in the court to which the 325
appeal is taken, a complete transcript of all the original papers, 326
testimony, and evidence offered, heard, and taken into 327
consideration in issuing the final order, adjudication, or 328
decision appealed from. The costs of the transcript shall be taxed 329
as a part of the costs of the appeal. 330

Sec. 2506.07. (A) The hearing of an appeal taken under 331
section 2506.05 of the Revised Code shall proceed as in the trial 332
of a civil action, but the court shall be confined to the 333
transcript as filed under section 2506.06 of the Revised Code 334
unless it appears on the face of that transcript or by affidavit 335
filed by the appellant that one of the following applies: 336

(1) The transcript does not contain a report of all evidence 337
admitted or proffered by the appellant. 338

(2) The appellant was not permitted to appear and be heard in 339
person, or by the appellant's attorney, in opposition to the final 340
order, adjudication, or decision appealed from and to do any of 341
the following: 342

(a) Present the appellant's position, arguments, and 343
contentions; 344

(b) Offer and examine witnesses and present evidence in 345
support; 346

(c) Cross-examine witnesses purporting to refute the 347
appellant's position, arguments, and contentions; 348

(d) Offer evidence to refute evidence and testimony offered 349
in opposition to the appellant's position, arguments, and 350
contentions; 351

(e) Proffer any evidence offered pursuant to division 352

(A)(2)(d) of this section into the record if the admission of it 353
is denied by the officer or body appealed from. 354

(3) The testimony adduced was not given under oath. 355

(4) The appellant was unable to present evidence because of a 356
lack of the power of subpoena by the officer or body appealed from 357
or because of the refusal after request of that officer or body to 358
afford the appellant opportunity to use the power of subpoena when 359
possessed by the officer or body. 360

(5) The officer or body failed to file with the transcript 361
conclusions of fact supporting the final order, adjudication, or 362
decision appealed from. 363

(B) If any circumstance described in divisions (A)(1) to (5) 364
of this section applies, the court shall hear the appeal upon the 365
transcript and additional evidence as may be introduced by any 366
party. At the hearing, any party may call, as if on 367
cross-examination, any witness who previously gave testimony in 368
opposition to that party. 369

Sec. 2506.08. If an appeal is taken under section 2506.05 of 370
the Revised Code, the court may find that the order, adjudication, 371
or decision is unconstitutional, illegal, arbitrary, capricious, 372
unreasonable, or unsupported by the preponderance of substantial, 373
reliable, and probative evidence on the whole record. Consistent 374
with its findings, the court may affirm, reverse, vacate, or 375
modify the order, adjudication, or decision, or remand the cause 376
to the officer or body appealed from with instructions to enter an 377
order, adjudication, or decision consistent with the findings or 378
opinion of the court. If the order, adjudication, or decision is 379
remanded to the officer or body appealed from with those 380
instructions, the officer or body shall enter the consistent 381
order, adjudication, or decision within five days after that 382

remand. The judgment of the court may be appealed by any party on 383
questions of law as provided in the Rules of Appellate Procedure 384
and, to the extent not in conflict with those rules, Chapter 2505. 385
of the Revised Code. 386

Sec. 2907.01. As used in sections 2907.01 to ~~2907.37~~ 2907.38 387
of the Revised Code: 388

(A) "Sexual conduct" means vaginal intercourse between a male 389
and female; anal intercourse, fellatio, and cunnilingus between 390
persons regardless of sex; and, without privilege to do so, the 391
insertion, however slight, of any part of the body or any 392
instrument, apparatus, or other object into the vaginal or anal 393
cavity of another. Penetration, however slight, is sufficient to 394
complete vaginal or anal intercourse. 395

(B) "Sexual contact" means any touching of an erogenous zone 396
of another, including without limitation the thigh, genitals, 397
buttock, pubic region, or, if the person is a female, a breast, 398
for the purpose of sexually arousing or gratifying either person. 399

(C) "Sexual activity" means sexual conduct or sexual contact, 400
or both. 401

(D) "Prostitute" means a male or female who promiscuously 402
engages in sexual activity for hire, regardless of whether the 403
hire is paid to the prostitute or to another. 404

(E) "Harmful to juveniles" means that quality of any material 405
or performance describing or representing nudity, sexual conduct, 406
sexual excitement, or sado-masochistic abuse in any form to which 407
all of the following apply: 408

(1) The material or performance, when considered as a whole, 409
appeals to the prurient interest in sex of juveniles. 410

(2) The material or performance is patently offensive to 411

prevailing standards in the adult community as a whole with 412
respect to what is suitable for juveniles. 413

(3) The material or performance, when considered as a whole, 414
lacks serious literary, artistic, political, and scientific value 415
for juveniles. 416

(F) When considered as a whole, and judged with reference to 417
ordinary adults or, if it is designed for sexual deviates or other 418
specially susceptible group, judged with reference to that group, 419
any material or performance is "obscene" if any of the following 420
apply: 421

(1) Its dominant appeal is to prurient interest; 422

(2) Its dominant tendency is to arouse lust by displaying or 423
depicting sexual activity, masturbation, sexual excitement, or 424
nudity in a way that tends to represent human beings as mere 425
objects of sexual appetite; 426

(3) Its dominant tendency is to arouse lust by displaying or 427
depicting bestiality or extreme or bizarre violence, cruelty, or 428
brutality; 429

(4) Its dominant tendency is to appeal to scatological 430
interest by displaying or depicting human bodily functions of 431
elimination in a way that inspires disgust or revulsion in persons 432
with ordinary sensibilities, without serving any genuine 433
scientific, educational, sociological, moral, or artistic purpose; 434

(5) It contains a series of displays or descriptions of 435
sexual activity, masturbation, sexual excitement, nudity, 436
bestiality, extreme or bizarre violence, cruelty, or brutality, or 437
human bodily functions of elimination, the cumulative effect of 438
which is a dominant tendency to appeal to prurient or scatological 439
interest, when the appeal to such an interest is primarily for its 440
own sake or for commercial exploitation, rather than primarily for 441

a genuine scientific, educational, sociological, moral, or 442
artistic purpose. 443

(G) "Sexual excitement" means the condition of human male or 444
female genitals when in a state of sexual stimulation or arousal. 445

(H) "Nudity" means the showing, representation, or depiction 446
of human male or female genitals, pubic area, or buttocks with 447
less than a full, opaque covering, or of a female breast with less 448
than a full, opaque covering of any portion thereof below the top 449
of the nipple, or of covered male genitals in a discernibly turgid 450
state. 451

(I) "Juvenile" means an unmarried person under the age of 452
eighteen. 453

(J) "Material" means any book, magazine, newspaper, pamphlet, 454
poster, print, picture, figure, image, description, motion picture 455
film, phonographic record, or tape, or other tangible thing 456
capable of arousing interest through sight, sound, or touch and 457
includes an image or text appearing on a computer monitor, 458
television screen, liquid crystal display, or similar display 459
device or an image or text recorded on a computer hard disk, 460
computer floppy disk, compact disk, magnetic tape, or similar data 461
storage device. 462

(K) "Performance" means any motion picture, preview, trailer, 463
play, show, skit, dance, or other exhibition performed before an 464
audience. 465

(L) "Spouse" means a person married to an offender at the 466
time of an alleged offense, except that such person shall not be 467
considered the spouse when any of the following apply: 468

(1) When the parties have entered into a written separation 469
agreement authorized by section 3103.06 of the Revised Code; 470

(2) During the pendency of an action between the parties for 471

annulment, divorce, dissolution of marriage, or legal separation;	472
(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.	473 474
(M) "Minor" means a person under the age of eighteen.	475
(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.	476 477
(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.	478 479
(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.	480 481 482
<u>Sec. 2907.38.</u> (A) As used in this section:	483
<u>(1) "Commercial establishment" means an entity that is open to the public and to which either of the following applies:</u>	484 485
<u>(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.</u>	486 487 488
<u>(b) It has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct.</u>	489 490 491
<u>(2) "Visual materials or performances" means films, videos, CD-ROM discs, streaming video, or other motion pictures.</u>	492 493
<u>(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</u>	494 495 496 497 498 499 500

apply: 501

(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. 502
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(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. 508
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(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: 515
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(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, member of the clergy, prosecutor, judge, or other person having a proper interest in the visual materials or performances. 518
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(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. 526
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(D) Whoever violates this section is guilty of permitting 532
unlawful operation of viewing booths depicting sexual conduct, a 533
misdemeanor of the first degree. 534

Sec. 3768.01. As used in this chapter: 535

(A) "Adult arcade" means any place to which the public is 536
permitted or invited in which coin-operated, slug-operated, or 537
electronically, electrically, or mechanically controlled still or 538
motion picture machines, projectors, or other image-producing 539
devices are regularly maintained to show images to five or fewer 540
persons per machine at any one time, and in which the images so 541
displayed are distinguished or characterized by their emphasis 542
upon matter exhibiting or describing specified sexual activities 543
or specified anatomical areas. 544

(B)(1) "Adult bookstore," "adult novelty store," or "adult 545
video store" means a commercial establishment that, for any form 546
of consideration, has as a significant or substantial portion of 547
its stock-in-trade in, derives a significant or substantial 548
portion of its revenues from, devotes a significant or substantial 549
portion of its interior business or advertising to, or maintains a 550
substantial section of its sales or display space for the sale or 551
rental of any of the following: 552

(a) Books, magazines, periodicals, or other printed matter, 553
or photographs, films, motion pictures, video cassettes, compact 554
discs, slides, or other visual representations, that are 555
characterized by their emphasis upon the exhibition or description 556
of specified sexual activities or specified anatomical areas; 557

(b) Instruments, devices, or paraphernalia that are designed 558
for use or marketed primarily for stimulation of human genital 559
organs or for sadomasochistic use or abuse of self or others. 560

(2) An establishment may have other principal business 561

purposes that do not involve the offering for sale, rental, or 562
viewing of materials exhibiting or describing specified sexual 563
activities or specified anatomical areas and still be categorized 564
as an adult bookstore, adult novelty store, or adult video store. 565
The existence of other principal business purposes does not exempt 566
an establishment from being categorized as an adult bookstore, 567
adult novelty store, or adult video store so long as one of its 568
principal business purposes is offering for sale or rental, for 569
some form of consideration, such materials that exhibit or 570
describe specified sexual activities or specified anatomical 571
areas. 572

(C) "Adult cabaret" means a nightclub, bar, juice bar, 573
restaurant, bottle club, or similar commercial establishment, 574
whether or not alcoholic beverages are served, that regularly 575
features any of the following: 576

(1) Persons who appear in a state of nudity or seminudity; 577

(2) Live performances that are characterized by the exposure 578
of specified anatomical areas or specified sexual activities; 579

(3) Films, motion pictures, video cassettes, slides, or other 580
photographic reproductions that are distinguished or characterized 581
by their emphasis upon the exhibition or description of specified 582
sexual activities or specified anatomical areas. 583

(D) "Adult entertainment" means the sale, rental, or 584
exhibition, for any form of consideration, of books, films, video 585
cassettes, magazines, periodicals, or live performances that are 586
characterized by an emphasis on the exposure or display of 587
specified anatomical areas or specified sexual activity. 588

(E) "Adult entertainment establishment" means an adult 589
arcade, adult bookstore, adult novelty store, adult video store, 590
adult cabaret, adult motion picture theater, adult theater, nude 591
or seminude model studio, or sexual encounter establishment. An 592

establishment in which a medical practitioner, psychologist, 593
psychiatrist, or similar professional person licensed by the state 594
engages in medically approved and recognized therapy, including, 595
but not limited to, massage therapy, as regulated pursuant to 596
section 4731.15 of the Revised Code, is not an "adult 597
entertainment establishment." 598

(F) "Adult motion picture theater" means a commercial 599
establishment where films, motion pictures, video cassettes, 600
slides, or similar photographic reproductions that are 601
distinguished or characterized by their emphasis upon the 602
exhibition or description of specified sexual activities or 603
specified anatomical areas are regularly shown for any form of 604
consideration. 605

(G) "Adult theater" means a theater, concert hall, 606
auditorium, or similar commercial establishment that, for any form 607
of consideration, regularly features persons who appear in a state 608
of nudity or seminudity or live performances that are 609
characterized by their emphasis upon the exposure of specified 610
anatomical areas or specified sexual activities. 611

(H) "Distinguished or characterized by their emphasis upon" 612
means the dominant or principal character and theme of the object 613
described by this phrase. For instance, when the phrase refers to 614
films "that are distinguished or characterized by their emphasis 615
upon the exhibition or description of specified sexual activities 616
or specified anatomical areas," the films so described are those 617
whose dominant or principal character and theme are the exhibition 618
or description of specified sexual activities or specified 619
anatomical areas. 620

(I)(1) "Nude or seminude model studio" means any place where 621
a person, who regularly appears in a state of nudity or 622
seminudity, is provided for money or any other form of 623

consideration to be observed, sketched, drawn, painted, 624
sculptured, photographed, or similarly depicted by other persons. 625

(2) A modeling class or studio is not a nude or seminude 626
model studio and is not subject to this chapter if it is operated 627
in any of the following ways: 628

(a) By a college or university supported entirely or partly 629
by taxation; 630

(b) By a private college or university that maintains and 631
operates educational programs, the credits for which are 632
transferable to a college or university supported entirely or 633
partly by taxation; 634

(c) In a structure to which all of the following apply: 635

(i) It has no sign visible from the exterior of the structure 636
and no other advertising indicating that a person appearing in a 637
state of nudity or seminudity is available for viewing. 638

(ii) In order to participate in a class in the structure, a 639
student must enroll at least three days in advance of the class. 640

(iii) Not more than one nude or seminude model is on the 641
premises at any one time. 642

(J) "Nudity," "nude," or "state of nudity" means the showing 643
of the human male or female genitals, pubic area, vulva, anus, 644
anal cleft, or cleavage with less than a fully opaque covering; or 645
the showing of the female breasts with less than a fully opaque 646
covering of any part of the nipple. 647

(K) "Regularly features" or "regularly shown" means a 648
consistent or substantial course of conduct, such that the films 649
or performances exhibited constitute a substantial portion of the 650
films or performances offered as a part of the ongoing business of 651
the adult entertainment establishment. 652

(L) "Seminude" or "state of seminudity" means a state of 653

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.

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(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:

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

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(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.

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(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."

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

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

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(1) Sex acts, normal or perverted, or actual or simulated,
including intercourse, oral copulation, masturbation, or sodomy;

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(2) Excretory functions as a part of or in connection with
any of the activities described in division (O)(1) of this
section.

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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

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adult entertainment establishment. 683

(B) No individual who is under eighteen years of age 684
knowingly shall show or give false information concerning the 685
individual's name or age, or other false identification, for the 686
purpose of gaining entrance to an adult entertainment 687
establishment. 688

(C) A person shall not be found guilty of a violation of 689
division (A) of this section if the person raises as an 690
affirmative defense and if the jury or, in a nonjury trial, the 691
court finds the person has established by a preponderance of the 692
evidence, all of the following: 693

(1) The individual gaining entrance to the adult 694
entertainment establishment exhibited to an operator, employee, 695
agent, or independent contractor of the adult entertainment 696
establishment a driver's or commercial driver's license or an 697
identification card issued under sections 4507.50 and 4507.52 of 698
the Revised Code showing that the individual was then at least 699
eighteen years of age. 700

(2) The operator, employee, agent, or independent contractor 701
made a bona fide effort to ascertain the true age of the 702
individual gaining entrance to the adult entertainment 703
establishment by checking the identification presented, at the 704
time of entrance, to ascertain that the description on the 705
identification compared with the appearance of the individual and 706
that the identification had not been altered in any way. 707

(3) The operator, employee, agent, or independent contractor 708
had reason to believe that the individual gaining entrance to the 709
adult entertainment establishment was at least eighteen years of 710
age. 711

(D) In any criminal action in which the affirmative defense 712

described in division (C) of this section is raised, the registrar 713
of motor vehicles or the deputy registrar who issued a driver's or 714
commercial driver's license or an identification card under 715
sections 4507.50 and 4507.52 of the Revised Code shall be 716
permitted to submit certified copies of the records, in the 717
registrar's or deputy registrar's possession, of the issuance of 718
the license or identification card in question, in lieu of the 719
testimony of the personnel of the bureau of motor vehicles in the 720
action. 721

Sec. 3768.03. No adult entertainment establishment shall be 722
open for business at any time before ten a.m. or after eleven 723
p.m., except that an adult entertainment establishment that holds 724
a liquor permit pursuant to Chapter 4303. of the Revised Code may 725
remain open pursuant to the terms of the permit but may not 726
conduct adult entertainment during the hours granted by the permit 727
that are before ten a.m. or after eleven p.m. except for 728
performances by persons who appear in a state of seminudity and 729
not in a state of nudity. 730

Sec. 3768.04. The following requirements shall apply to an 731
adult entertainment establishment that regularly features persons 732
who appear in a state of nudity or seminudity or that regularly 733
features live performances characterized by their emphasis upon 734
the display or simulation of specified sexual activities: 735

(A) No person, while nude or seminude, knowingly shall do any 736
of the following: 737

(1) Appear in the view of any patron, customer, or client 738
unless the person remains at least six feet from the patron, 739
customer, or client and on a stage at least two feet above the 740
floor; 741

(2) Receive any pay or gratuity directly from any patron, 742

customer, or client; 743

(3) Touch any patron, customer, or client, or the clothing of 744
any patron, customer, or client. 745

(B) No person, while on the premises of this type of adult 746
entertainment establishment, knowingly shall do any of the 747
following: 748

(1) Give any pay or gratuity directly to another person who 749
is nude or seminude; 750

(2) Touch any person while that person is nude or seminude, 751
or touch the clothing or costume of any person while that person 752
is nude or seminude. 753

(C) No owner, manager, agent or designee of an owner or 754
manager, or employee of an adult entertainment establishment shall 755
knowingly permit any person, regardless of whether the person was 756
hired or engaged as an employee or independent contractor, to 757
violate division (A) or (B) of this section. 758

(D) Nothing in this section prohibits a patron, customer, or 759
client from indirectly giving any pay or gratuity to another 760
person who is nude or seminude, such as placing the pay or 761
gratuity in a tip jar. 762

Sec. 3768.05. (A) If an alleged violation of this chapter has 763
occurred or is occurring, the attorney general, the prosecuting 764
attorney of the county, the city director of law, village 765
solicitor, or other similar chief legal officer of the municipal 766
corporation, or the township law director may commence a civil 767
action in the court of common pleas of the county in which the 768
violation has occurred or is occurring for injunctive relief 769
against the person who has violated or is violating this chapter. 770
The court of common pleas has jurisdiction to grant, and shall 771
grant, temporary and permanent injunctive relief upon a showing 772

that the person against whom the action is brought has violated or 773
is violating this chapter. 774

(B) Premises used or occupied for repeated violations of this 775
chapter constitute a nuisance subject to abatement pursuant to 776
sections 3767.01 to 3767.99 of the Revised Code. 777

(C) This chapter does not affect legal or equitable causes of 778
action or remedies, under common law or statute to abate nuisances 779
or prevent the state or any municipal corporation, township, or 780
person from exercising equitable rights under common law or 781
statute to abate nuisances. 782

Sec. 3768.06. Nothing in this chapter preempts or prevents 783
political subdivisions in this state from adopting or enforcing 784
additional lawful and reasonable restrictions, licensing 785
requirements, zoning or other regulations, or other civil or 786
administrative provisions pertaining to the location, 787
configuration, code compliance, or other aspects of the business 788
operations of adult entertainment establishments except that those 789
regulations shall not be in conflict with any provision in Chapter 790
4303. of the Revised Code, or with any rule adopted by the 791
division of liquor control pursuant to that chapter, that 792
regulates establishments that hold a liquor permit. 793

Sec. 3768.99. (A) Whoever violates division (A) of section 794
3768.02, section 3768.03, or section 3768.04 of the Revised Code 795
is guilty of a misdemeanor of the first degree. Each day a person 796
violates any of these divisions constitutes a separate offense. 797

(B) Whoever violates division (B) of section 3768.02 of the 798
Revised Code is guilty of a misdemeanor of the fourth degree. 799

Sec. 4301.25. (A) The liquor control commission may suspend 800

or revoke any permit issued under this chapter or Chapter 4303. of 801
the Revised Code for the violation of any of the applicable 802
restrictions of either chapter or of any lawful rule of the 803
commission, for other sufficient cause, and for the following 804
causes: 805

(1) Conviction of the holder or the holder's agent or 806
employee for violating division (A) of section 3768.02 of the 807
Revised Code, section 3768.03, or section 3768.04 of the Revised 808
Code, or a section of this chapter or Chapter 4303. of the Revised 809
Code or for a felony; 810

(2) The entry of a judgment pursuant to division (D) or (E) 811
of section 3767.05 of the Revised Code against a permit holder or 812
the holder's agent or employee finding the existence of a nuisance 813
at a liquor permit premises or finding the existence of a nuisance 814
as a result of the operation of a liquor permit premises; 815

(3) Making any false material statement in an application for 816
a permit; 817

(4) Assigning, transferring, or pledging a permit contrary to 818
the rules of the commission; 819

(5) Selling or promising to sell beer or intoxicating liquor 820
to a wholesale or retail dealer who is not the holder of a proper 821
permit at the time of the sale or promise; 822

(6) Failure of the holder of a permit to pay an excise tax 823
together with any penalties imposed by the law relating to that 824
failure and for violation of any rule of the department of 825
taxation in pursuance of the tax and penalties. 826

(B) The liquor control commission shall revoke a permit 827
issued pursuant to this chapter or Chapter 4303. of the Revised 828
Code upon the conviction of the holder of the permit of a 829
violation of division (C)(1) of section 2913.46 of the Revised 830
Code. 831

(C)(1) When the commission considers the length of a suspension of a permit, it may consider the volume of the business of the permit holder, so that the length of the suspension is in proportion to the seriousness of the offense and the permit holder's business in order that the suspension serve as a penalty and a deterrent. Evidence as to the volume of business of the permit holder may be offered by the permit holder or subpoenaed by the commission.

(2) When the commission considers the length of a proposed suspension of a permit and the proposed suspension results from an offense that was committed during a compliance check as defined in section 4301.635 of the Revised Code, the commission may consider whether trickery, deceit, or deception was used in the conduct of the compliance check.

Section 2. That existing sections 303.02, 503.29, 519.02, 2505.08, 2506.01, 2506.02, 2506.03, 2506.04, 2907.01, and 4301.25 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. 862

(3) The concern over sexually transmitted diseases is a 863
legitimate health concern of this state that demands reasonable 864
regulation of adult entertainment establishments in order to 865
protect the health and well-being of the citizens. 866

(4) Minimal regulations are a legitimate and reasonable means 867
of accountability to ensure that operators of adult entertainment 868
establishments comply with reasonable regulations and to ensure 869
that operators do not knowingly allow their establishments to be 870
used as places of illegal sexual activity or solicitation. 871

(5) There is convincing documented evidence that adult 872
entertainment establishments, because of their very nature, have a 873
deleterious effect on both the existing businesses around them and 874
the surrounding residential areas adjacent to them and cause 875
increased crime, particularly in the overnight hours, and the 876
downgrading of property values. 877

(6) The General Assembly desires to minimize and control 878
these adverse effects and by minimizing and controlling these 879
adverse effects to protect the health, safety, and welfare of the 880
citizenry; protect the citizens from increased crime; preserve the 881
quality of life; preserve the property values and character of 882
surrounding neighborhoods; and deter the spread of urban blight. 883

(7) The General Assembly has determined that local zoning and 884
other locational criteria alone do not adequately protect the 885
health, safety, and general welfare of the people of this state. 886

(8) It is not the intent of the General Assembly in enacting 887
this chapter to suppress any speech activities protected by the 888
First Amendment but to enact a content-neutral statute that 889
addresses the secondary effects of adult entertainment 890
establishments. 891

(9) It is not the intent of the General Assembly to condone 892
or legitimize the distribution of obscene material, and the 893
General Assembly recognizes that state and federal law prohibits 894
the distribution of obscene materials and expects and encourages 895
state law enforcement officials to enforce state obscenity 896
statutes against any such illegal activities in this state. 897

(B) It is the intent of the General Assembly in enacting 898
Chapter 3768. of the Revised Code to regulate adult entertainment 899
establishments in order to promote the health, safety, morals, and 900
general welfare of the citizens of this state and to establish 901
reasonable and uniform regulations to prevent the deleterious 902
secondary effects of adult entertainment establishments within 903
this state. The provisions of Chapter 3768. of the Revised Code 904
have neither the purpose nor effect of imposing a limitation or 905
restriction on the content of any communicative materials, 906
including sexually oriented materials. Similarly, it is not the 907
intent nor effect of the General Assembly in enacting Chapter 908
3768. of the Revised Code to restrict or deny access by adults to 909
sexually oriented materials protected by the First Amendment, or 910
to deny access by the distributors and exhibitors of adult 911
entertainment and adult materials to their intended market. 912
Neither is it the intent nor effect of the General Assembly in 913
enacting Chapter 3768. of the Revised Code to condone or 914
legitimize the distribution or exhibition of obscene material. 915

(C) Based on evidence concerning the adverse secondary 916
effects of adult uses on communities presented in hearings and in 917
reports made available to the legislature and on findings 918
incorporated in the cases of *City of Littleton, Colorado v. Z.J.* 919
Gifts D-4, L.L.C. (2004), 541 U.S. 774, City of Erie v. Pap's A.M. 920
(2000), 529 U.S. 277; Barnes v. Glen Theatre, Inc. (1991), 501 921
U.S. 560; City of Renton v. Playtime Theatres, Inc. (1986), 475 922
U.S. 41; Young v. American Mini Theatres (1976), 426 U.S. 50; 923

<i>California v. LaRue</i> (1972), 409 U.S. 109; <i>DLS, Inc. v. City of Chattanooga</i> (6th Cir. 1997) 107 F.3d 403; <i>East Brooks Books, Inc. v. City of Memphis</i> , (6th Cir. 1995), 48 F.3d 220; <i>Harris v. Fitchville Township Trustees</i> (N.D. Ohio 2000), 99 F. Supp.2d 837; <i>Bamon Corp. v. City of Dayton</i> (S.D. Ohio 1990), 730 F. Supp. 90, <i>aff'd</i> (6th Cir. 1991), 923 F.2d 470; <i>Broadway Books v. Roberts</i> (E.D. Tenn. 1986), 642 F. Supp. 486; <i>Bright Lights, Inc. v. City of Newport</i> (E.D. Ky. 1993), 830 F. Supp. 378; <i>Richland Bookmart v. Nichols</i> (6th Cir. 1998), 137 F.3d 435; <i>Deja Vu v. Metro Government</i> (6th Cir. 1999), 1999 U.S. App. LEXIS 535; <i>Threesome Entertainment v. Strittmather</i> (N.D. Ohio 1998), 4 F.Supp.2d 710; <i>J.L. Spoons, Inc. v. City of Brunswick</i> (N.D. Ohio 1999), 49 F. Supp.2d 1032; <i>Triplett Grille, Inc. v. City of Akron</i> (6th Cir. 1994) 40 F.3d 129; <i>Nightclubs, Inc. v. City of Paducah</i> (6th Cir. 2000), 202 F.3d 884; <i>O'Connor v. City and County of Denver</i> (10th Cir. 1990), 894 F.2d 1210; <i>Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County</i> (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; <i>State of Ohio ex rel. Rothal v. Smith</i> (Ohio C.P. 2002), Summit C.P. No. CV 01094594; <i>Z.J. Gifts D-2, L.L.C. v. City of Aurora</i> (10th Cir. 1998), 136 F.3d 683; <i>Connection Distrib. Co. v. Reno</i> (6th Cir. 1998), 154 F.3d 281; <i>Sundance Assocs. v. Reno</i> (10th Cir. 1998), 139 F.3d 804; <i>American Library Association v. Reno</i> (D.C. Cir. 1994), 33 F.3d 78; <i>American Target Advertising, Inc. v. Giani</i> (10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996);	924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956
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Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma City, 957
Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New 958
York (1994); Ellicottville, New York (1998); Des Moines, Iowa 959
(1984); Islip, New York (1980); Adams County, Colorado (1987); 960
Manatee County, Florida (1987); New Hanover County, North Carolina 961
(1989); Las Vegas, Nevada (1978); Cattaraugus County, New York 962
(1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, 963
Texas (1986); New York Times Square study (1994); Report to ACLJ 964
on the Secondary Impacts of Sex Oriented Businesses (1996); the 965
findings from the Report of the Attorney General's Working Group 966
On The Regulation Of Sexually Oriented Businesses (June 6, 1989, 967
State of Minnesota); and on testimony to Congress in 136 Cong. 968
Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 969
Cong. Rec. E. 3750; and also on findings from the paper entitled 970
"Stripclubs According to Strippers: Exposing Workplace Sexual 971
Violence," by Kelly Holsopple, Program Director, Freedom and 972
Justice Center for Prostitution Resources, Minneapolis, Minnesota; 973
and from "Sexually Oriented Businesses: An Insider's View," by 974
David Sherman, presented to the Michigan House Committee on Ethics 975
and Constitutional Law, Jan. 12, 2000; and from various other 976
police reports, testimony, newspaper reports, and other 977
documentary evidence, the General Assembly finds: 978

(1) Adult entertainment establishments lend themselves to 979
ancillary unlawful and unhealthy activities that are presently 980
uncontrolled by the operators of the establishments. Further, 981
there is presently no statewide mechanism to make the owners of 982
these establishments responsible for the activities that occur on 983
their premises. 984

(2) Certain employees of adult entertainment establishments, 985
as defined in section 3768.01 of the Revised Code as adult 986
theaters and cabarets, engage in a higher incidence of certain 987
types of illicit sexual behavior than employees of other 988

establishments. 989

(3) Sexual acts, including masturbation and oral and anal 990
sex, occur at adult entertainment establishments, especially those 991
that provide private or semiprivate booths or cubicles for viewing 992
films, videos, or live sex shows. The "couch dances" or "lap 993
dances" that frequently occur in adult entertainment 994
establishments featuring live nude or seminude dancers constitute 995
or may constitute the offense of "engaging in prostitution" under 996
section 2907.25 of the Revised Code. 997

(4) Offering and providing such space encourages such 998
activities, which creates unhealthy conditions. 999

(5) Persons frequent certain adult theaters, adult arcades, 1000
and other adult entertainment establishments for the purpose of 1001
engaging in sexual activity within the premises of those adult 1002
entertainment establishments. 1003

(6) Numerous communicable diseases may be spread by 1004
activities occurring in sexually oriented businesses, including, 1005
but not limited to, syphilis, gonorrhea, human immunodeficiency 1006
virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, 1007
campylobacter and shigella infections, chlamydial, myoplasmal and 1008
ureoplasmal infections, trichomoniasis, and chancroid. 1009

(7) Since 1981 and to the present, there has been an 1010
increasing cumulative number of reported cases of AIDS caused by 1011
the human immunodeficiency virus (HIV) in the United States: 600 1012
in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 1013
through December 31, 1992. 1014

(8) A total of 10,255 AIDS cases had been reported in Ohio as 1015
of January 1999. Ohio has required HIV case reporting since 1990, 1016
and the reported information shows 7,969 people living with (HIV) 1017
(4,213) and (AIDS) (3,756) in the state. 1018

(9) Since 1981 and to the present, there have been an 1019
increasing cumulative number of persons testing positive for the 1020
HIV antibody test in Ohio. 1021

(10) The number of cases of early (less than one year) 1022
syphilis in the Unites States reported annually has risen. 33,613 1023
cases were reported in 1982, and 45,200 cases were reported 1024
through November 1990. 1025

(11) The number of cases of gonorrhea in the United States 1026
reported annually remains at a high level, with over one-half 1027
million cases being reported in 1990. 1028

(12) The Surgeon General of the United States in his report 1029
of October 22, 1986, has advised the American public that AIDS and 1030
HIV infection may be transmitted through sexual contact, 1031
intravenous drug abuse, and exposure to infected blood and blood 1032
components, and from an infected mother to her newborn. 1033

(13) According to the best scientific evidence, AIDS and HIV 1034
infection, as well as syphilis and gonorrhea, are principally 1035
transmitted by sexual acts. 1036

(14) Sanitary conditions in some adult entertainment 1037
establishments are unhealthy, in part, because the activities 1038
conducted there are unhealthy, and, in part, because of the 1039
unregulated nature of the activities and the failure of the owners 1040
and the operators of the facilities to self-regulate those 1041
activities and maintain those facilities. 1042

(15) The findings noted in divisions (C)(1) to (14) of this 1043
section raise substantial governmental concerns. 1044

(16) Adult entertainment establishments have operational 1045
characteristics that should be reasonably regulated in order to 1046
protect those substantial governmental concerns. 1047

(17) The enactment of Chapter 3768. of the Revised Code will 1048

promote the general welfare, health, morals, and safety of the
citizens of this state.

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