

**As Reported by the House Civil and Commercial Law Committee**

**126th General Assembly**

**Regular Session**

**2005-2006**

**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**

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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  
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  
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.

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(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.

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(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.

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(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

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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

<u>may provide for the following:</u>	143
<u>(1) Modification of the administrative procedures, including</u>	144
<u>administrative zoning procedures, of the township as those</u>	145
<u>procedures apply to adult entertainment establishments to ensure</u>	146
<u>that constitutional requirements are met;</u>	147
<u>(2) Criminal and civil sanctions for adult entertainment</u>	148
<u>establishments that violate regulations established by the</u>	149
<u>resolution.</u>	150
<b>Sec. 519.02. (A)</b> 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. 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. 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, 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. 259

(5) The officer or body failed to file with the transcript, 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 294

<u>Code.</u>	295
<u>(2) In addition to appeals brought pursuant to division</u>	296
<u>(A)(1) of this section, a court of common pleas may hear appeals</u>	297
<u>under this section and sections 2506.06 to 2506.08 of the Revised</u>	298
<u>Code in cases in which the court determines that there is a threat</u>	299
<u>of restraint of expression protected or presumptively protected</u>	300
<u>under the First Amendment to the United States Constitution or</u>	301
<u>under Section 11 of Article I, Ohio Constitution.</u>	302
<u>(B) An appellant seeking to have an appeal heard under this</u>	303
<u>section shall designate it as an expedited appeal by inserting the</u>	304
<u>words "Expedited Appeal Requested" in conspicuous typeface in the</u>	305
<u>caption of the notice of appeal.</u>	306
<u>(C) In an appeal under this section, if the political</u>	307
<u>subdivision does not object to the expedited appeal within three</u>	308
<u>days of the filing of the notice of appeal or if, over the</u>	309
<u>objection of the political subdivision, the court determines that</u>	310
<u>there is a threat of restraint of expression protected or</u>	311
<u>presumptively protected under the First Amendment of the United</u>	312
<u>States Constitution or under Section 11 of Article I of the Ohio</u>	313
<u>Constitution, the court shall conduct a hearing as promptly as is</u>	314
<u>practicable and render a decision in a prompt and expeditious</u>	315
<u>manner consistent with the United States Constitution and the Ohio</u>	316
<u>Constitution. If the court denies the request for an expedited</u>	317
<u>appeal, the appeal shall be heard in accordance with sections</u>	318
<u>2506.01 to 2506.04 of the Revised Code.</u>	319
<u>(D) The appeal provided in this section is in addition to any</u>	320
<u>other remedy of appeal provided by law.</u>	321
<b><u>Sec. 2506.06. Within five days after filing a notice of</u></b>	322
<b><u>appeal under section 2506.05 of the Revised Code, the officer or</u></b>	323
<b><u>body from which the appeal is taken, upon the filing of a praecipe</u></b>	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.

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

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(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:

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(1) Its dominant appeal is to prurient interest;

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(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;

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

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(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;

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(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

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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 473  
effective date of the judgment for legal separation. 474

(M) "Minor" means a person under the age of eighteen. 475

(N) "Mental health client or patient" has the same meaning as 476  
in section 2305.51 of the Revised Code. 477

(O) "Mental health professional" has the same meaning as in 478  
section 2305.115 of the Revised Code. 479

(P) "Sado-masochistic abuse" means flagellation or torture by 480  
or upon a person or the condition of being fettered, bound, or 481  
otherwise physically restrained. 482

Sec. 2907.38. (A) As used in this section: 483

(1) "Commercial establishment" means an entity that is open 484  
to the public and to which either of the following applies: 485

(a) It has a substantial or significant portion of its stock 486  
in trade of the sale, rental, or viewing of visual materials or 487  
performances depicting sexual conduct. 488

(b) It has as a principal business purpose the sale, rental, 489  
or viewing of visual materials or performances depicting sexual 490  
conduct. 491

(2) "Visual materials or performances" means films, videos, 492  
CD-ROM discs, streaming video, or other motion pictures. 493

(B) No person who has custody, control, or supervision of a 494  
commercial establishment, with knowledge of the character of the 495  
visual material or performance involved, shall knowingly permit 496  
the use of, or offer the use of, viewing booths, stalls, or 497  
partitioned portions of a room located in the commercial 498  
establishment for the purpose of viewing visual materials or 499  
performances depicting sexual conduct unless both of the following 500  
apply: 501

(1) The inside of each booth, stall, or partitioned room is 502  
visible from, and at least one side of each booth, stall, or 503  
partitioned room is open to, a continuous and contiguous main 504  
aisle or hallway that is open to the public areas of the 505  
commercial establishment and is not obscured by any curtain, door, 506  
or other covering or enclosure. 507

(2) No booth, stall, or partitioned room is designed, 508  
constructed, pandered, or allowed to be used for the purpose of 509  
encouraging or facilitating nudity or sexual activity on the part 510  
of or between patrons or members of the public, and no booth, 511  
stall, or partitioned room has any aperture, hole, or opening for 512  
the purpose of encouraging or facilitating nudity or sexual 513  
activity. 514

(C) It is an affirmative defense to a charge under this 515  
section that either of the following applies to the involved 516  
visual materials or performances: 517

(1) The visual materials or performances depicting sexual 518  
conduct are disseminated or presented for a bona fide medical, 519  
scientific, educational, religious, governmental, judicial, or 520  
other proper purpose and by or to a physician, psychologist, 521  
sociologist, scientist, teacher, person pursuing bona fide studies 522  
or research, librarian, member of the clergy, prosecutor, judge, 523  
or other person having a proper interest in the visual materials 524  
or performances. 525

(2) The visual materials or performances depicting sexual 526  
conduct, taken as a whole, would be found by a reasonable person 527  
to have serious literary, artistic, political, or scientific value 528  
or are presented or disseminated in good faith for a serious 529  
literary, artistic, political, or scientific purpose and are not 530  
pandered for their prurient appeal. 531

(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 model studio and is not subject to this chapter if it is operated in any of the following ways: 626  
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(a) By a college or university supported entirely or partly by taxation; 629  
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(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; 631  
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(c) In a structure to which all of the following apply: 635

(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. 636  
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(ii) In order to participate in a class in the structure, a student must enroll at least three days in advance of the class. 639  
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(iii) Not more than one nude or seminude model is on the premises at any one time. 641  
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(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. 643  
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(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. 648  
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(L) "Seminude" or "state of seminudity" means a state of dress in which opaque clothing covers not more than the genitals, 653  
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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  
adult entertainment establishment.

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(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.

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

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

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

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(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.

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(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.

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**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.

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(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. 775  
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(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. 778  
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**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. 783  
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**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. 794  
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(B) Whoever violates division (B) of section 3768.02 of the Revised Code is guilty of a misdemeanor of the fourth degree. 798  
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**Sec. 4301.25.** (A) The liquor control commission may suspend or revoke any permit issued under this chapter or Chapter 4303. of the Revised Code for the violation of any of the applicable restrictions of either chapter or of any lawful rule of the 800  
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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 3768.04 of the Revised Code, or 808  
a section of this chapter or Chapter 4303. of the Revised Code or 809  
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 832  
suspension of a permit, it may consider the volume of the business 833

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.

(3) The concern over sexually transmitted diseases is a

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  
*California v. LaRue (1972), 409 U.S. 109; DLS, Inc. v. City of* 924  
*Chattanooga (6th Cir. 1997) 107 F.3d 403; East Brooks Books, Inc.* 925  
*v. City of Memphis, (6th Cir. 1995), 48 F.3d 220; Harris v.* 926

<i>Fitchville Township Trustees</i> (N.D. Ohio 2000), 99 F. Supp.2d 837;	927
<i>Bamon Corp. v. City of Dayton</i> (S.D. Ohio 1990), 730 F. Supp. 90,	928
<i>aff'd</i> (6th Cir. 1991), 923 F.2d 470; <i>Broadway Books v. Roberts</i>	929
(E.D. Tenn. 1986), 642 F. Supp. 486; <i>Bright Lights, Inc. v. City</i>	930
<i>of Newport</i> (E.D. Ky. 1993), 830 F. Supp. 378; <i>Richland Bookmart v.</i>	931
<i>Nichols</i> (6th Cir. 1998), 137 F.3d 435; <i>Deja Vu v. Metro Government</i>	932
(6th Cir. 1999), 1999 U.S. App. LEXIS 535; <i>Threesome Entertainment</i>	933
<i>v. Strittmather</i> (N.D. Ohio 1998), 4 F.Supp.2d 710; <i>J.L. Spoons,</i>	934
<i>Inc. v. City of Brunswick</i> (N.D. Ohio 1999), 49 F. Supp.2d 1032;	935
<i>Triplett Grille, Inc. v. City of Akron</i> (6th Cir. 1994) 40 F.3d	936
129; <i>Nightclubs, Inc. v. City of Paducah</i> (6th Cir. 2000), 202 F.3d	937
884; <i>O'Connor v. City and County of Denver</i> (10th Cir. 1990), 894	938
F.2d 1210; <i>Deja Vu of Nashville, Inc., et al. v. Metropolitan</i>	939
<i>Government of Nashville and Davidson County</i> (6th Cir. 2001), 2001	940
U.S. App. LEXIS 26007; <i>State of Ohio ex rel. Rothal v. Smith</i> (Ohio	941
C.P. 2002), Summit C.P. No. CV 01094594; <i>Z.J. Gifts D-2, L.L.C. v.</i>	942
<i>City of Aurora</i> (10th Cir. 1998), 136 F.3d 683; <i>Connection Distrib.</i>	943
<i>Co. v. Reno</i> (6th Cir. 1998), 154 F.3d 281; <i>Sundance Assocs. v.</i>	944
<i>Reno</i> (10th Cir. 1998), 139 F.3d 804; <i>American Library Association</i>	945
<i>v. Reno</i> (D.C. Cir. 1994), 33 F.3d 78; <i>American Target Advertising,</i>	946
<i>Inc. v. Giani</i> (10th Cir. 2000), 199 F.3d 1241; and other cases and	947
on reports of secondary effects occurring in and around adult	948
entertainment establishments in Phoenix, Arizona (1984);	949
Minneapolis, Minnesota (1980); Houston, Texas (1983);	950
Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden	951
Grove, California (1991); Los Angeles, California (1977);	952
Whittier, California (1978); Austin, Texas (1986); Seattle,	953
Washington (1989); Oklahoma City, Oklahoma (1986); Cleveland, Ohio	954
(1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993);	955
Bellevue, Washington (1998); Newport News, Virginia (1996);	956
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, gonorrhoea, 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 gonorrhoea 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 gonorrhoea, 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	1049
citizens of this state.	1050