

As Passed by the Senate

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S. B. No. 16

By Initiative

Cosponsor: Senator Amstutz

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A B I L L

To enact sections 3768.01, 3768.02, and 3768.03 of
the Revised Code to generally regulate sexually
oriented businesses.

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

Section 1. That sections 3768.01, 3768.02, and 3768.03 of the
Revised Code be enacted to read as follows:

Sec. 3768.01. Sexually oriented business regulations

(A) No sexually oriented business shall be or remain open for
business between 12:00 midnight and 6:00 a.m. on any day, except
that a sexually oriented business that holds a liquor permit
pursuant to Chapter 4303. of the Revised Code may remain open
until the hour specified in that permit, provided that it does not
conduct, offer, or allow sexually oriented entertainment activity
between 12:00 midnight and 6:00 a.m.

(B) While on the premises of a sexually oriented business:

(1) No employee, while nude or seminude, knowingly shall do
any of the following:

(a) Appear in the view of any patron unless the employee is
at least six feet from all patrons and on a stage at least two

feet above the floor; 19

(b) Touch any patron or the clothing of any patron; or 20

(c) While in the view of any patron, touch any other person 21
who is nude or seminude; 22

(2) No patron knowingly shall touch any employee while that 23
employee is nude or seminude, or touch the clothing or costume of 24
any employee while that employee is nude or seminude; 25

(3) No employee of a sexually oriented business who regularly 26
appears nude or seminude on the premises of that sexually oriented 27
business shall knowingly be or remain within six feet of any 28
patron. 29

(C) Whoever violates division (A) of this section is guilty 30
of illegally operating a sexually oriented business, a misdemeanor 31
of the first degree. 32

(D) Whoever violates division (B) of this section is guilty 33
of illegal sexually oriented activity in a sexually oriented 34
business, a misdemeanor of the first degree. 35

Sec. 3768.02. Definitions. 36

As used in this chapter: 37

(A) "Adult bookstore" or "adult video store" means a 38
commercial establishment that has as a significant or substantial 39
portion of its stock in trade or inventory in, derives a 40
significant or substantial portion of its revenues from, devotes a 41
significant or substantial portion of its interior business or 42
advertising to, or maintains a substantial section of its sales or 43
display space for the sale or rental, for any form of 44
consideration, of any of the following: books, magazines, 45
periodicals, or other printed matter, or photographs, films, 46
motion pictures, video cassettes, compact discs, slides, or other 47
visual representations, that are characterized by their emphasis 48

upon the exhibition or description of specified sexual activities 49
or specified anatomical areas. 50

(B) "Adult cabaret" means a nightclub, bar, juice bar, 51
restaurant, bottle club, or other commercial establishment, 52
regardless of whether alcoholic beverages are served, which 53
regularly features any of the following: 54

(1) Persons who appear in a state of nudity or seminudity; or 55

(2) Live performances that are characterized by the exposure 56
of specified anatomical areas or specified sexual activities. 57

(C) "Adult motion picture theater" means a commercial 58
establishment where films, motion pictures, videocassettes, 59
slides, or similar photographic reproductions which are 60
characterized by their emphasis upon the display of "specified 61
sexual activities" or "specified anatomical areas" are regularly 62
shown to more than five persons for any form of consideration. 63

(D) "Characterized by" means describing the essential 64
character or quality of an item. 65

(E) "Employee" means any person who performs any service on 66
the premises of a sexually oriented business, on a full time, part 67
time, or contract basis, whether or not the person is denominated 68
an employee, independent contractor, agent, or otherwise. 69
"Employee" does not include a person exclusively on the premises 70
for repair or maintenance of the premises or for the delivery of 71
goods to the premises. 72

(F) "Nudity," "nude" or "state of nudity" means the showing 73
of the human male or female genitals, pubic area, vulva, or anus 74
with less than a fully opaque covering, or the showing of the 75
female breast with less than a fully opaque covering of any part 76
of the nipple and areola. 77

(G) "Operate" means to cause to function or to put or keep in 78

a state of doing business. "Operator" means any person on the 79
premises of a sexually oriented business who causes the business 80
to function or who puts or keeps in operation the business or who 81
is authorized to manage the business or exercise overall 82
operational control of the business premises. 83

(H) "Patron" means any person on the premises of a sexually 84
oriented business except: 85

(1) An operator or an employee of that sexually oriented 86
business; or 87

(2) A person who is on the premises exclusively for repair or 88
maintenance of the premises or for the delivery of goods to the 89
premises. 90

(I) "Person" means an individual, proprietorship, 91
partnership, corporation, association, or other legal entity. 92

(J) "Premises" means the real property upon which the 93
sexually oriented business is located, and all appurtenances 94
thereto and buildings thereon, including, but not limited to, the 95
sexually oriented business, the grounds, private walkways, and 96
parking lots and/or parking garages adjacent thereto, under the 97
ownership, control, or supervision of the licensee. 98

(K) "Regularly" means and refers to the consistent or 99
repeated doing of the act so described. 100

(L) "Seminude" or "state of seminudity" means the showing of 101
the female breast below a horizontal line across the top of the 102
areola and extending across the top of the areola and extending 103
across the width of the breast at that point, or the showing of 104
the male or female buttocks. This definition shall include the 105
lower portion of the human female breast, but shall not include 106
any portion of the cleavage of the human female breasts exhibited 107
by a bikini, dress, blouse, shirt, leotard, or similar wearing 108
apparel provided the areola is not exposed in whole or in part. 109

(M) "Sexual device" means any three dimensional object 110
designed and marketed for stimulation of the male or female human 111
genitals, anus, female breasts, or for sadomasochistic use or 112
abuse of oneself or others and shall include devices such as 113
dildos, vibrators, penis pumps, and physical representations of 114
the human genital organs. Nothing in this division shall be 115
construed to include devices primarily intended for protection 116
against sexually transmitted diseases or for preventing pregnancy. 117

(N) "Sexual device shop" means a commercial establishment 118
that regularly features sexual devices. Nothing in this definition 119
shall be construed to include any pharmacy, drug store, medical 120
clinic, or any establishment primarily dedicated to providing 121
medical or healthcare products or services, nor shall this 122
definition be construed to include commercial establishments which 123
do not restrict access to their premises by reason of age. 124

(O) "Sexual encounter center" means a business or commercial 125
enterprise that, as one of its principal business purposes, 126
purports to offer for any form of consideration, physical contact 127
in the form of wrestling or tumbling between persons of the 128
opposite sex when one or more of the persons is nude or seminude. 129

(P) "Sexually oriented business" means an adult bookstore or 130
adult video store, an adult cabaret, an adult motion picture 131
theater, a sexual device shop, or a sexual encounter center. For 132
purposes of this chapter, no business shall be classified as a 133
sexually oriented business by virtue of showing, selling, or 134
renting materials rated NC-17 or R by the motion picture 135
association of America. 136

(O) "Sexually oriented entertainment activity" means the 137
sale, rental, or exhibition, for any form of consideration, of 138
books, films, video cassettes, magazines, visual images, or live 139
performances which are characterized by an emphasis on the 140
exposure or display of any specified anatomical areas or specified 141

<u>sexual activity.</u>	142
<u>(R) "Specified anatomical areas" means and includes human</u>	143
<u>genitals, pubic region, buttocks, and female breast below a point</u>	144
<u>immediately above the top of the areola.</u>	145
<u>(S) "Specified sexual activity" means intercourse, oral</u>	146
<u>copulation, masturbation, sodomy, or excretory functions as a part</u>	147
<u>of or in connection with any of these activities.</u>	148
<u>Sec. 3768.03. Rationale and findings; construction</u>	149
<u>(A) It is the purpose of this chapter to promote the health,</u>	150
<u>safety, and general welfare of the people of Ohio by establishing</u>	151
<u>reasonable regulations to prevent the deleterious secondary</u>	152
<u>effects of sexually oriented businesses. The regulations in this</u>	153
<u>chapter have neither the purpose nor effect of imposing a</u>	154
<u>limitation or restriction on the content or reasonable access to</u>	155
<u>any communicative materials, including sexually oriented</u>	156
<u>materials.</u>	157

(B) The prohibitions in this chapter are based upon and 158
justified by the adverse secondary effects of sexually oriented 159
businesses identified in numerous judicial decisions and reports 160
concerning such secondary effects including, but not limited to: 161
City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); 162
City of Erie v. Pap's A.M., 529 U.S. 277 (2000); Barnes v. Glen 163
Theatre, Inc., 501 U.S. 560 (1991); City of Renton v. Playtime 164
Theatres, Inc., 475 U.S. 41 (1986), Young v. American Mini 165
Theatres, 427 U.S. 50 (1976, California v. LaRue, 409 U.S. 109 166
(1972); Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. of 167
Trustees, 411 F.3d 777 (6th Cir. 2005) (en banc); DLS, Inc. v. 168
City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); 511 Detroit 169
Street, Inc. v. Kelley, 807 F.2d 1293 (6th Cir. 1986); Broadway 170
Books v. Roberts, 642 F. Supp. 486 (E.D. Tenn. 1986); Bright 171
Lights, Inc. v. City of Newport, 830 F. Supp. 378 (E.D. Ky. 1993); 172
Richland Bookmart, Inc. v. Nichols, 278 F.3d 570 (6th Cir. 2002); 173
Richland Bookmart v. Nichols, 137 F.3d 435 (6th Cir. 1998); In re 174
Tenn. Public Indecency Statute, Nos. 96-6512, 96-6573, 97-5924, 175
97-5938, 1999 U.S. App. LEXIS 535 (6th Cir. Jan. 13, 1999); Bamon 176
Corp. v. City of Dayton, 923 F.2d 470 (6th Cir. 1991); City of 177
Chattanooga v. Cinema 1, Inc., 150 S.W. 3d 390 (Tenn. Ct. App. 178
2004); Deja Vu of Nashville, Inc., et al. v. Metropolitan 179
Government of Nashville & Davidson County, 274 F.3d 377 (6th Cir. 180
2001); Kentucky Restaurant Concepts, Inc. v. City of Louisville & 181
Jefferson County, 209 F. Supp. 2d 672 (W.D. Ky. 2002); Ctr. for 182
Fair Public Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 183
2003); City of Cleveland v. Daher, 2000 Ohio App. LEXIS 5937 (Ohio 184
Ct. App. 2000); State ex rel. Nasal v. BJS No. 2, Inc., 127 Ohio 185
Misc. 2d 101 (Ct. Comm. Pleas 2003); Gammoh v. City of La Habra, 186
395 F.3d 1114 (9th Cir. 2005); World Wide Video of Washington, 187
Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, 188
Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); and 189
Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, 190

California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; New York, New York Times Square - 1994; Minneapolis, Minnesota (Holsopple Report)- 1998; Michigan Legislature (Sherman Testimony) - 2000; which support the following findings:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to lewdness, public indecency, prostitution, potential spread of disease, illicit drug use and drug trafficking, personal and property crimes, negative impacts on surrounding properties, blight, litter, and sexual assault and exploitation.

(2) Each of the foregoing negative secondary effects constitutes a harm which the state has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects is independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. The cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects.

(C) The provisions of this chapter shall be construed so as to further the purposes of this chapter as set forth in division (A) of this section.

(D) Nothing in this chapter shall be construed to preempt or prevent counties, municipal corporations and townships from adopting or enforcing laws concerning sexually oriented businesses that are as restrictive or more restrictive than the provisions in this chapter.

Section 2. Severability. This chapter and each section,

division and provision hereof is hereby declared to be independent 222
such that if any such section, division or provision, or the 223
application thereof to any person or circumstance, is held to be 224
invalid, the remaining sections, divisions or provisions and the 225
application of such sections, divisions or provisions to any 226
person or circumstances other than those to which it is held 227
invalid shall not be affected thereby. It is hereby declared that 228
such sections, divisions and provisions would have been enacted 229
independently of such section, divisions or provisions so known to 230
be invalid. 231