



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Am. H.B. 23

126th General Assembly
(As Passed by the House)

Reps. 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

BILL SUMMARY

- Prohibits persons having custody, control, or supervision of commercial establishments, with knowledge of the character of the visual material or performance, from knowingly permitting the use of, or offering the use of, viewing booths, stalls, or partitioned parts of rooms for the purpose of viewing visual materials or performances depicting sexual conduct unless certain requirements with respect to the booths' physical characteristics are met, and designates the offense as permitting unlawful operation of viewing booths depicting sexual conduct.
- Creates new R.C. Chapter 3768., which contains prohibitions, restrictions, penalties, civil remedies, and other regulations and definitions pertaining to adult entertainment establishments.
- Prohibits a person from knowingly allowing an individual under the age of 18 on the premises of an adult entertainment establishment and prohibits an individual under the age of 18 from knowingly giving or showing false information or identification for the purpose of gaining entrance to an adult entertainment establishment.
- Prohibits adult entertainment establishments from being open for business during certain hours of the day, except that adult entertainment establishments that hold a liquor permit may operate during the hours granted by the permit, subject to a restriction in regard to conducting adult entertainment.

- Prohibits a nude or seminude person in certain adult entertainment establishments from getting closer than a specified distance from, touching, or generally receiving any pay or gratuity from, a patron, customer, or client, generally prohibits a patron, customer, or client in certain adult entertainment establishments from giving any pay or gratuity directly to or purposely touching a nude or seminude person or the person's clothing, and prohibits an owner or employee of certain adult entertainment establishments from permitting any person to violate either of the two preceding prohibitions.
- Authorizes the Attorney General, a prosecuting attorney, a city director of law, village solicitor, or other similar legal officer of a municipal corporation, or a township law director to commence a civil action for injunctive relief in the court of common pleas of the county in which an alleged violation of any of the bill's adult entertainment prohibitions has occurred or is occurring and requires the court to grant temporary and permanent injunctive relief upon a showing of a violation.
- Specifies that premises used or occupied for repeated violations of the bill's adult entertainment prohibitions constitute a nuisance subject to abatement.
- Provides that the bill's provisions regulating adult entertainment establishments do not preempt or prevent political subdivisions from adopting additional regulations that do not conflict with the Liquor Permit Law, or any rule adopted pursuant to that Law, that regulates establishments holding a liquor permit.
- Replaces the existing provisions in the Township Law pertaining to township regulation of adult cabarets and adult-oriented businesses with provisions authorizing township regulation of adult entertainment establishments.
- Provides that township regulation of adult entertainment establishments, which may include licensing or permit requirements and criminal and civil sanctions for violation of the regulations, may be by resolution adopted by a board of township trustees or by township electors upon an initiative petition, and provides for injunctive relief or abatement of nuisance proceedings for any violation of a township resolution.

- Specifically permits a county or a township that regulates adult entertainment establishments to modify zoning procedures as necessary to ensure that the procedures comply with constitutional requirements.
- Creates new expedited procedures upon appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state denying an application for, or suspending or revoking, a license or permit to locate or operate an adult entertainment establishment.
- Specifies the General Assembly's findings and intent in regard to the enactment of new R.C. Chapter 3768.

TABLE OF CONTENTS

PERMITTING UNLAWFUL OPERATION OF VIEWING BOOTHS DEPICTING SEXUAL CONDUCT

Prohibition and penalties	4
Affirmative defense.....	5
Definitions	5

REGULATION OF ADULT ENTERTAINMENT ESTABLISHMENTS

Overview.....	6
Prohibitions, penalties, and restrictions	6
Allowing underage persons to enter premises.....	6
Giving false information or identification.....	7
Restricted operating hours.....	8
Prohibitions regarding performers and patrons	8
Civil remedies	9
Injunctive relief by legal officers	9
Nonpreemption of local regulations	9
Suspension or revocation of liquor permit	10
Definitions	10
Regulation by townships--operation of the bill	13
Resolution by board of township trustees	13
Resolution by initiative petition	14
Sanctions.....	14
Regulation by townships--existing law.....	15
Regulation of adult cabarets.....	15
Prohibitions and penalties	16
Application for and expiration of permit.....	17
Permissible regulations	18

Grounds for denial or revocation of permit	18
Procedure for denial or revocation of permit.....	18
Disposition of fees.....	19
Regulation of adult-oriented businesses.....	19
Existing definitions	20
Zoning procedures	21

EXPEDITED APPEAL PROCEDURES

Existing law.....	21
In general	21
Transcript.....	21
Hearing	22
Findings	23
Operation of the bill	23
Appeal of license or permit decision	23
Expedited appeal and hearing.....	24
Filing of transcript	24
Hearing of appeal	24
Court findings	25

STATEMENT OF LEGISLATIVE INTENT AND FINDINGS

CONTENT AND OPERATION

**PERMITTING UNLAWFUL OPERATION OF VIEWING
BOOTHES DEPICTING SEXUAL CONDUCT**

Prohibition and penalties

The bill creates the offense of permitting unlawful operation of viewing booths depicting sexual conduct. Specifically, the bill prohibits any person who has custody, control, or supervision of a *commercial establishment*, with knowledge of the character of the *visual material or performance* involved, from knowingly permitting the use of, or offering the use of, viewing booths, stalls, or partitioned portions of a room located in the commercial establishment for the purpose of viewing visual materials or performances depicting *sexual conduct* unless both of the following apply (see "Definitions," below, for definitions of the italicized terms) (R.C. 2907.38(B)):

- (1) The inside of each booth, stall, or partitioned room is visible from, and at least one side of each booth, stall, or partitioned room is open to, a continuous and contiguous main aisle or hallway that is open to the public areas of the



commercial establishment and is not obscured by any curtain, door, or other covering or enclosure.

(2) No booth, stall, or partitioned room is designed, constructed, pandered, or allowed to be used for the purpose of encouraging or facilitating *nudity* or *sexual activity* (see "**Definitions**," below, for definitions of the italicized terms) 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.

A violation of the above prohibition is the offense of "permitting unlawful operation of viewing booths depicting sexual conduct," a misdemeanor of the first degree (R.C. 2907.38(D)).

Affirmative defense

The bill provides that it is an affirmative defense to a charge of permitting unlawful operation of viewing booths depicting sexual conduct that either of the following applies to the involved visual materials or performances (R.C. 2907.38(C)):

(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.

(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.

Definitions

The bill defines the following terms for purposes of its provisions regarding viewing booth operation, as described above (R.C. 2907.38(A)):

"Commercial establishment" means an entity that is open to the public and to which either of the following applies: (1) 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, or (2) it has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct.

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

The following definitions in the existing Sex Offenses Law, which are not changed by the bill, apply to its provisions (R.C. 2907.01(A), (B), (C), and (H)):

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

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

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

REGULATION OF ADULT ENTERTAINMENT ESTABLISHMENTS

Overview

The bill creates new R.C. Chapter 3768., which contains prohibitions, restrictions, penalties, civil remedies, and other regulations and definitions pertaining to adult entertainment establishments. The new Chapter replaces the existing provisions in the Township Law pertaining to the regulation of adult cabarets and adult-oriented businesses with provisions authorizing the regulation of adult entertainment establishments, which the bill repeals.

Prohibitions, penalties, and restrictions

Allowing underage persons to enter premises

The bill prohibits any person from knowingly allowing an individual, including, but not limited, to a patron, customer, or employee, who is under 18 years of age on the premises of an *adult entertainment establishment* (see "Definitions," below). A violation of this prohibition is a misdemeanor of the first

degree. Each day a person violates the prohibition constitutes a separate offense. (R.C. 3768.02(A) and 3768.99(A).)

A person cannot be found guilty of a violation of the above prohibition if the person raises as an affirmative defense and if the jury or, in a nonjury trial, the court finds the person has established by a preponderance of the evidence, all of the following (R.C. 3768.02(C)):

(1) The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent, or independent contractor of the adult entertainment establishment a driver's or commercial driver's license or an identification card issued by the Registrar of Motor Vehicles or a deputy registrar under the Driver's License Law showing that the individual was then at least 18 years of age.

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

(3) The operator, employee, agent, or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least 18 years of age.

In any criminal action in which the above affirmative defense is raised, the Registrar of Motor Vehicles or the deputy registrar who issued a driver's or commercial driver's license or an identification card under the Driver's License Law must be permitted to submit certified copies of the records, in the Registrar's or deputy registrar's possession, of the issuance of the license or identification card in question, in lieu of the testimony of the personnel of the Bureau of Motor Vehicles in the action (R.C. 3768.02(D)).

Giving false information or identification

The bill prohibits any individual who is under 18 years of age from knowingly showing or giving false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment. A violation of this prohibition is a misdemeanor of the fourth degree (R.C. 3768.02(B) and 3768.99(B)).

Restricted operating hours

The bill prohibits any adult entertainment establishment from being open for business at any time before 10 a.m. or after 11 p.m., except that an adult entertainment establishment that holds a liquor permit pursuant to the Liquor Permit Law may remain open pursuant to the terms of the permit but may not conduct *adult entertainment* (see "**Definitions**," below) during the hours granted by the permit that are before 10 a.m. or after 11 p.m. except for performances by persons who appear in a state of seminudity and not in a state of nudity. A violation of this prohibition is a misdemeanor of the first degree. Each day a person violates this prohibition constitutes a separate offense. (R.C. 3768.03 and 3768.99(A).)

Prohibitions regarding performers and patrons

The bill enacts a series of requirements that apply to an adult entertainment establishment that *regularly features* persons who appear in a *state of nudity or seminudity* or that *regularly features* live performances *characterized by their emphasis* upon the display or simulation of *specified sexual activities* (see "**Definitions**," below for definitions of the italicized terms). Under those requirements, as applied to an adult entertainment establishment described in the preceding sentence, the bill does all of the following (R.C. 3768.04(A) to (D)):

(1) It prohibits any person, while *nude* or *seminude* (see "**Definitions**," below), from knowingly doing any of the following: (a) appearing in the view of any patron, customer, or client unless the person remains at least six feet from the patron, customer, or client and on a stage at least two feet above the floor, (b) receiving any pay or gratuity directly from any patron, customer, or client, or (c) touching any patron, customer, or client, or the clothing of any patron, customer, or client.

(2) It prohibits any person, while on the premises of that type of adult entertainment establishment, from knowingly doing any of the following: (a) giving any pay or gratuity directly to another person who is nude or seminude, or (b) touching any person while that person is nude or seminude, or touching the clothing or costume of any person while that person is nude or seminude.

(3) It prohibits any owner, manager, agent or designee of an owner or manager, or employee of an adult entertainment establishment from knowingly permitting any person, regardless of whether the person was hired or engaged as an employee or independent contractor, to violate a prohibition described in paragraph (1) or (2), above.

(4) It provides that nothing in the provisions described in paragraphs (1), (2), and (3), above, 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.

A violation of any of the prohibitions described in paragraphs (1), (2), and (3), above, is a misdemeanor of the first degree. Each day a person violates any of those prohibitions constitutes a separate offense. (R.C. 3768.99(A).)

Civil remedies

Injunctive relief by legal officers

The bill provides that, if an alleged violation of any of the bill's adult entertainment establishment prohibitions 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 the prohibition. The court of common pleas has jurisdiction to grant, and must grant, temporary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating the prohibition. (R.C. 3768.05(A).)

The bill specifies that premises used or occupied for repeated violations of the bill's adult entertainment establishment provisions constitute a nuisance subject to abatement under the Nuisance Abatement Law (R.C. 3768.05(B)).

The bill provides that its adult entertainment establishment provisions do 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 (R.C. 3768.05(C)).

Nonpreemption of local regulations

The bill provides that nothing in its provisions regulating adult entertainment establishments preempts or prevents political subdivisions in Ohio 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 must not be in conflict with any provision in the Liquor

Permit Law, or with any rule adopted by the Division of Liquor Control pursuant to that Law, that regulates establishments that hold a liquor permit (R.C. 3768.06).

Suspension or revocation of liquor permit

The bill authorizes the Liquor Control Commission to suspend or revoke any permit issued under the Liquor Control Law or the Liquor Permit Law for conviction of the permit holder or the holder's agent or employee for violating any of the prohibitions described above in "**Allowing underage persons to enter premises,**" "**Restricted operating hours,**" and "**Prohibitions regarding performers and patrons**" (R.C. 4301.25(A)(1)).

Definitions

The bill defines the following terms for purposes of the regulation of adult entertainment establishments in R.C. Chapter 3768. as described above (R.C. 3768.01) and the regulation of adult entertainment establishments by townships as described below (new R.C. 503.51) (italicized terms are also defined):

(1) "Adult entertainment establishment" means an *adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment* (see definitions in (3) to (9), below). An establishment in which a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated pursuant to R.C. 4731.15, is not an "adult entertainment establishment." (R.C. 3768.01(E).)

(2) "Adult entertainment" means the sale, rental, or exhibition, for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances that are *characterized by an emphasis* on the exposure or display of *specified anatomical areas* (see definitions in (12) and (15), below) or specified sexual activity (R.C. 3768.01(D)).

(3) "Adult arcade" means any place to which the public is permitted or invited in which coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and in which the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas (R.C. 3768.01(A)).

(4) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental of any of the following: (a) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas, or (b) instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of self or others.

An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas, and still be categorized as an adult bookstore, adult novelty store, or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas. (R.C. 3768.01(B).)

(5) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following: (a) persons who appear in a state of nudity or seminudity, (b) live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities, or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas. (R.C. 3768.01(C).)

(6) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are *regularly shown* for any form of consideration (R.C. 3768.01(F)).

(7) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities (R.C. 3768.01(G)).

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

A modeling class or studio is not a nude or seminude model studio and is not subject to the bill's adult entertainment-related provisions if it is operated in any of the following ways: (a) by a college or university supported entirely or partly by taxation, (b) by a private college or university that maintains and operates educational programs, the credits for which are transferable to a college or university supported entirely or partly by taxation, or (c) in a structure to which all of the following apply: (i) it has no sign visible from the exterior of the structure and no other advertising indicating that a person appearing in a state of nudity or seminudity is available for viewing, (ii) in order to participate in a class in the structure, a student must enroll at least three days in advance of the class, and (iii) no more than one nude or seminude model is on the premises at any one time. (R.C. 3768.01(I).)

(9) "Sexual encounter establishment" means a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur: (a) two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities, or (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. 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 R.C. 4731.15, is not a "sexual encounter establishment." (R.C. 3768.01(M).)

(10) "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 (R.C. 3768.01(J)).

(11) "Seminude" or "state of seminudity" means a state of dress in which opaque clothing covers not more than the genitals, pubic region, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices (R.C. 3768.01(L)).

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

sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description of specified sexual activities or specified anatomical areas. (R.C. 3768.01(H).)

(13) "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 (R.C. 3768.01(K)).

(14) "Specified sexual activity" means any of the following: (a) sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation, or sodomy, or (b) excretory functions as a part of or in connection with any of the activities described above in (a). (R.C. 3768.01(O).)

(15) "Specified anatomical areas" means the cleft of the buttocks, anus, male or female genitals, or the female breast (R.C. 3768.01(N)).

Regulation by townships--operation of the bill

The bill outright repeals the provisions of existing law that authorize townships to regulate and require the registration of adult cabarets (see "**Regulation by townships--existing law**," below), except the provisions generally described in the following sentence, and replaces existing law with the provisions described below. It modifies the existing provisions on township resolutions proposed by initiative petition and regulating certain adult-oriented businesses.

Resolution by board of township trustees

Under the bill, a board of township trustees, by resolution, may regulate the operation of *adult entertainment establishments* (see the second succeeding paragraph). 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 must not be in conflict with the Liquor Permit Law, or with any rule adopted by the Division of Liquor Control pursuant to that Law, that regulate establishments that hold a liquor permit. (New R.C. 503.52(A).)

A board of township trustees that has adopted a resolution as described above 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 must be applied initially to the payment of costs incurred in the prosecution and enforcement of the

resolution, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the county or township. (New R.C. 503.52(B).)

Under new R.C. 503.51, all of the definitions set forth in "Definitions," above, apply to new R.C. 503.51 to 503.53, as enacted in the bill.

Resolution by initiative petition

The bill provides that resolutions of the type as described above may be proposed by initiative petition by the electors of a township and adopted by election by these electors, under the same circumstances, in the same manner, and subject to the same penalties as provided in specified sections in the Municipal Corporation Law for ordinances and other measures of municipal corporations, insofar as those sections are applicable to townships, except as described below in paragraphs (1) to (4) in "Regulation of adult-oriented businesses" under "Regulation by townships--existing law" (R.C. 503.53(A), renumbered from existing R.C. 503.29).

The bill specifies that a resolution proposed by initiative petition as described above may provide for the following (R.C. 503.53(B), added by the bill):

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

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

Sanctions

When it appears that a resolution adopted by the board of township trustees or by initiative petition as described above 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. The legal counsel of a township may commence a civil action under the Nuisance Abatement Law to abate as a nuisance any place in the unincorporated area of the township at which such a resolution is being or has been violated. All proceeds from the sale of personal property or contents seized pursuant to the action must be applied initially to the payment of costs incurred in the prosecution of the action and the costs associated with the abatement and sale ordered under that Law, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the county or township. Any proceeds remaining after that initial application must

be deposited into the township treasury and credited to the general fund. (New R.C. 503.52(C).)

Regulation by townships--existing law

The existing Adult Cabaret Law, contained in R.C. 503.51 to 503.59, pertains to the regulation by townships of certain establishments designated as adult cabarets. The bill outright repeals existing R.C. 503.51 to 503.59.

Regulation of adult cabarets

Under the existing Adult Cabaret Law, a board of township trustees, by resolution, may regulate and require the registration of *adult cabarets* (see "Existing definitions," below) within the unincorporated territory of the township. In accordance with that Law, for that purpose, the board, by a majority vote of all members, may adopt, amend, administer, and enforce regulations within the unincorporated territory of the township.

A board may adopt regulations and amendments only after public hearing at not fewer than two regular sessions of the board. The board must cause to be published in at least one newspaper of general circulation in the township notice of the public hearings, including the time, date, and place, once a week for two weeks immediately preceding the hearings. The board must make available proposed regulations or amendments to the public at the office of the board.

Regulations or amendments adopted by the board are effective 30 days after the date of adoption unless, within 30 days after the adoption of the regulations or amendments, the township clerk receives a petition, signed by a number of qualified electors residing in the unincorporated area of the township equal to not less than 10% of the total number of votes cast in that area for all candidates for the office of Governor at the most recent general election for that office, requesting the board to submit the regulations or amendments to the electors of the area for approval or rejection at the next primary or general election occurring at least 75 days after the board receives the petition.

No regulation or amendment for which the referendum vote has been requested is effective unless a majority of the votes cast on the issue is in favor of the regulation or amendment. Upon certification by the board of elections that a majority of the votes cast on the issue was in favor of the regulation or amendment, the regulation or amendment takes immediate effect.

The board must make available regulations it adopts or amends to the public at the office of the board and cause to be published a notice of the availability of the regulations in at least one newspaper of general circulation in

the township within ten days after their adoption or amendment. (Existing R.C. 503.52--outright repealed by the bill.)

Prohibitions and penalties

Under existing law, the following prohibitions apply if a board of township trustees has adopted a resolution as described above (existing R.C. 503.53 and 503.99--outright repealed by the bill):

(1) A person is prohibited from engaging in, conducting or carrying on, or permitting to be engaged in, conducted or carried on in the unincorporated areas of the township, the operation of an adult cabaret without first having obtained a permit from the board of township trustees as described below.

Whoever violates this prohibition is guilty of a misdemeanor of the first degree for a first offense, and a felony of the fourth degree for a second offense.

(2) An owner or operator of an adult cabaret located in the unincorporated areas of the township is prohibited from knowingly doing any of the following:

(a) Refusing to allow appropriate state or local authorities, including police officers, access to the adult cabaret for any health or safety inspection, or any other inspection conducted to ensure compliance with the Adult Cabaret Law and regulations adopted by the township under that Law;

(b) Operating during the hours designated as prohibited hours of operation by the board of township trustees;

(c) Employing any person under the age of 18;

(d) Establishing or operating an adult cabaret within 500 feet from the boundaries of a parcel of real estate having situated on it a school, church, library, public playground, or township park.

(3) A person employed in an adult cabaret located in the unincorporated area of the township is prohibited from knowingly doing any of the following in the performance of duties at the adult cabaret:

(a) Placing his or her hand upon, touching with any part of his or her body, fondling in any manner, or massaging the genitals, pubic area, or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female;

(b) Performing, offering, or agreeing to perform any act that would require the touching of the genitals, pubic area, or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female;

(c) Uncovering the genitals, pubic area, or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female.

Whoever violates a prohibition described in paragraph (2) or (3), above, is guilty of a misdemeanor of the third degree.

Application for and expiration of permit

Under existing law, if a board of township trustees has adopted a resolution as described above, the application for a permit to operate an adult cabaret must be made to the board and must include all of the following (existing R.C. 503.54--outright repealed by the bill):

(1) An initial, nonrefundable filing fee of \$250 and an annual nonrefundable renewal fee of \$125;

(2) A health and safety report of an inspection of the premises performed within 30 days of the application to determine compliance with applicable health and safety codes. Appropriate state or local authorities acting pursuant to an agreement with the board must perform this inspection.

(3) The full name and address of any person applying for a permit, including any partner or limited partner of a partnership applicant, any officer or director of a corporate applicant, and any stock holder holding more than 2% of the stock of a corporate applicant, the date of birth and social security number of each individual, and the federal identification number of any partnership or corporation;

(4) Authorization for an investigation into the criminal record of any person applying for a permit;

(5) Any other information determined by the board to be necessary.

A permit issued to an adult cabaret expires one year after the date of issuance, except that no adult cabaret may be required to discontinue business because of the failure of the board to act on a renewal application filed in a timely manner and pending before the board on the expiration date of the establishment's permit. Each permit must contain the name of the applicant, the address of the adult cabaret, and the expiration date of the permit. (Existing R.C. 503.54--outright repealed by the bill.)

Permissible regulations

Existing law specifies that, if a board of township trustees has adopted a resolution as described above, the regulations adopted for that purpose may require an adult cabaret to do any of the following (existing R.C. 503.56--outright repealed by the bill):

- (1) Display its current permit in an area open to the public;
- (2) Undergo periodic health and safety inspections to determine continual compliance with applicable health and safety codes;
- (3) Be open for business only during specified hours;
- (4) Comply with any other requirement reasonably thought necessary by the board.

Grounds for denial or revocation of permit

Under existing law, if a board of township trustees has adopted a resolution as described above, it must deny any application for a permit to operate an adult cabaret or revoke a previously issued permit, for any of the following reasons (existing R.C. 503.55--outright repealed by the bill):

- (1) Any of the information required for the application has been falsified or the application has not been fully completed.
- (2) There has been a failure to cooperate with any required health or safety inspection.
- (3) Any one of the persons named on the application has been convicted of or pleaded guilty to any violation of the Sex Offenses Law, or any violation of any municipal ordinance or any law of another state that is substantially equivalent to any offense contained in that Law.
- (4) Any person employed at the licensed adult cabaret has been convicted of or pleaded guilty to a violation of the prohibition described above in paragraph (3) under "**Prohibitions and penalties.**"
- (5) The Liquor Control Commission has revoked a liquor permit held by any one of the persons named on the application.

Procedure for denial or revocation of permit

Existing law specifies that a board of township trustees acting under the Adult Cabaret Law need not hold any hearing in connection with an order denying

or revoking a permit to operate an adult cabaret. The board must maintain a complete record of each proceeding and notify the applicant in writing of its order. Any person adversely affected by an order of the board denying or revoking a permit to operate an adult cabaret may appeal from the order of the board to the court of common pleas of the county in which the place of business of the applicant or permit holder is to be located or is located, as appropriate. The appeal must be in accordance with the Appeals from Orders of Political Subdivision Administrative Officers and Agencies Law. (Existing R.C. 503.57--outright repealed by the bill.)

Disposition of fees

Existing law provides that, if a board of township trustees has adopted a resolution as described above, the board must deposit the fees collected by the township for adult cabaret permits in the township general fund and first use the fees for the cost of administering and enforcing regulations adopted under the Adult Cabaret Law (existing R.C. 503.58--outright repealed by the bill).

Regulation of adult-oriented businesses

Existing law authorizes the board of township trustees of a township to adopt, amend, and rescind resolutions that regulate or restrict, within the unincorporated area of the township, *adult-oriented businesses* that sell, offer for sale, or distribute *material that is harmful to juveniles or obscene* (see "**Existing definitions**," below) (existing R.C. 503.65(B)--outright repealed by the bill).

Resolutions of the type as described above may be proposed by initiative petition by the electors of a township and adopted by election by these electors, under the same circumstances, in the same manner, and subject to the same penalties as provided in specified sections in the Municipal Corporation Law for ordinances and other measures of municipal corporations, insofar as those sections are applicable to townships, except as follows (R.C. 503.29):

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

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

(3) Initiative petitions must contain the signatures of electors of the township equal in number to at least 10% of the total vote cast in the township for the office of Governor at the most recent general election for that office.



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

When it appears that a resolution adopted as described in the second preceding paragraph or adopted by initiative petition is being violated, the legal counsel of the township in which the violation is taking place may bring an action to enjoin the violation.

The legal counsel of a township may bring an action to abate as a nuisance under the Nuisance Abatement Law any place in the unincorporated area of the township at which a resolution adopted as described in the preceding paragraph has been violated. In bringing this action, the legal counsel must proceed in the same manner as if the legal counsel were the chief legal officer of a municipal corporation bringing an action to abate a nuisance under that Law. All proceeds from the sale of personal property or contents seized pursuant to a civil action brought under that Law must be applied initially to the payment of costs incurred in the prosecution of the action and the costs associated with the abatement and sale ordered under that Law, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the complainant. Any proceeds remaining after that initial application must be deposited into the township treasury and credited to the general fund. (Existing R.C. 503.65(C)--outright repealed by the bill.)

Whoever violates a resolution adopted as described above is guilty of a misdemeanor of the first degree or, if the offender previously has been convicted of a violation of a resolution adopted as described above, a felony of the fifth degree (existing R.C. 503.99--outright repealed by the bill).

Existing definitions

For purposes of the above township regulations, existing law defines the following terms:

"Adult cabaret" means a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity in the performance of their duties.

"Nudity" means the showing of either of the following: (1) the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or (2) the female breast with less than a fully opaque covering on any part of the nipple. (Existing R.C. 503.51--outright repealed by the bill.)

"Adult-oriented business" means an establishment having as its primary stock and trade material that is distinguished or characterized by its emphasis on

sexually oriented *material that is harmful to juveniles or obscene* (see COMMENT 1) (existing R.C. 503.65(A)--outright repealed by the bill).

Zoning procedures

The bill provides that a board of county commissioners that pursuant to the County Rural Zoning Law, or a board of township trustees that pursuant to the Township Zoning Law, regulates adult entertainment establishments, as defined in the bill, may modify the respective administrative zoning procedures with regard to adult entertainment establishments as the board of county commissioners or the board of township trustees, as the case may be, determines necessary to ensure that the procedures comply with all applicable constitutional requirements (R.C. 303.02(B) and 519.02(B)).

EXPEDITED APPEAL PROCEDURES

Existing law

In general

Existing R.C. Chapter 2506. governs appeals from final orders, adjudications, or decisions of political subdivision administrative officers and agencies. Under that law, every *final order, adjudication, or decision* (defined in this paragraph) of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in R.C. Chapter 2505. (General Appeals Law), *except as modified by R.C. Chapter 2506.* (Appeals from Orders of Political Subdivision Administrative Officers and Agencies). The appeal provided in *R.C. Chapter 2506.* is in addition to any other remedy of appeal provided by law. A "final order, adjudication, or decision" means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding. (R.C. 2506.01.)

Transcript

Within 40 days after filing the notice of appeal, the officer or body from which the appeal is taken, upon the filing of a praecipe, must prepare and file in the court to which the appeal is taken, a complete transcript of all the original

papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. (R.C. 2506.02.)

Under the General Appeals Law, in the case of an administrative-related appeal, within 40 days after the filing of a notice of appeal or the obtaining of a leave to appeal, the administrative instrumentality whose final order is being appealed must prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order. (R.C. 2505.08.)

Hearing

The hearing of the appeal described under "**In general**," above, proceeds as in the trial of a civil action, but the court must be confined to the transcript as filed unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies (R.C. 2506.03):

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

(2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision appealed from, and to present the appellant's position, arguments, and contentions; offer and examine witnesses and present evidence in support; cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions; offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions; or proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.

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

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

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

If any circumstance described above in (1) to (5) applies, the court must hear the appeal upon the transcript and any additional evidence that may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party. (R.C. 2506.03.)

Findings

The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, the General Appeals Law. (R.C. 2506.04.)

Operation of the bill

The bill creates new expedited procedures upon appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state denying an application for, or suspending or revoking, a license or permit to locate or operate an adult entertainment establishment, as defined by the bill or as similarly defined by a political subdivision. It limits the application of existing law as described above to appeals of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state or to administrative-related appeals, as the case may be, *other than* expedited appeals described in the preceding sentence. (R.C. 2505.08, 2506.01(A), 2506.02, 2506.03(A), and 2506.04.)

Appeal of license or permit decision

The bill provides that except as modified by the bill's provisions contained in R.C. 2506.05 to 2506.08, every final order, adjudication, or decision (the bill, in R.C. 2506.01(C), applies existing law's definition of "final order, adjudication, or decision," as described above in the first paragraph under **Existing law**," to the new procedures in the bill) of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state denying an application for, or suspending or revoking, a license or permit to locate or operate an adult entertainment establishment, as defined in the bill or as similarly defined by a political subdivision, may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in the General Appeals Law.

In addition to appeals brought as described in the preceding paragraph, a court of common pleas may hear appeals under the bill 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 (see **COMMENT 2**). The appeal as described above is in addition to any other remedy of appeal provided by law. (R.C. 2506.05(A) and (D).)

Expedited appeal and hearing

An appellant seeking to have an appeal heard under the bill's provisions described above in "**Appeal of license or permit decision**" must designate it as an expedited appeal by inserting the words "Expedited Appeal Requested" in conspicuous typeface in the caption of the notice of appeal. 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 must 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 must be heard in accordance with R.C. 2506.01 to 2506.04, described above in "**Existing law**." (R.C. 2506.05(B) and (C).)

Filing of transcript

Within five days after filing a notice of appeal as described above, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, must prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. The costs of the transcript are taxed as a part of the costs of the appeal. (R.C. 2506.06.)

Hearing of appeal

The hearing of an appeal taken as described above must proceed as in the trial of a civil action, but the court must be confined to the transcript as filed unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of a list of circumstances that are the same as the circumstances described above in paragraphs (1) to (5) under "**Hearing**" in "**Existing law**" applies (R.C. 2506.07(A)).

If any circumstance described in those paragraphs (1) to (5) applies, the court must hear the appeal upon the transcript and additional evidence as may be

introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party. (R.C. 2506.07(B).)

Court findings

If an appeal is taken as described above, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. If the order, adjudication, or decision is remanded to the officer or body appealed from with those instructions, the officer or body must enter the consistent order, adjudication, or decision within five days after that remand. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those Rules, the General Appeals Law. (R.C. 2506.08.)

STATEMENT OF LEGISLATIVE INTENT AND FINDINGS

The bill provides that in enacting R.C. 3768.01 to 3768.06 and R.C. 3768.99 in the bill (regarding the regulation of adult entertainment establishments), the General Assembly makes the following statement of intent and findings (Section 3):

(A)(1) Adult entertainment establishments require special supervision from the public safety agencies of Ohio 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 Ohio.

(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 Ohio that demands reasonable regulation of adult entertainment establishments in order to protect the health and well-being of the citizens.

(4) Minimal regulations are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly

allow their establishments to be used as places of illegal sexual activity or solicitation.

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

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

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

(8) It is not the intent of the General Assembly in enacting R.C. Chapter 3768. to suppress any speech activities protected by the First Amendment but to enact a content-neutral statute that addresses the secondary effects of adult entertainment establishments.

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

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

(C) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and on findings incorporated in the cases of *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774, *City of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *City of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. City of Chattanooga* (6th Cir. 1997) 107 F.3d 403; *East Brooks Books, Inc. v. City of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. City of Dayton* (S.D. Ohio 1990), 730 F.Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F.Supp. 486; *Bright Lights, Inc. v. City of Newport* (E.D. Ky. 1993), 830 F.Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. City of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. City of Akron* (6th Cir. 1994), 40 F.3d 129; *Nightclubs, Inc. v. City of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. City and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. City of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (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); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma City, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); the findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on



testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence, the General Assembly finds:

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

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

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

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

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

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

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

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

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

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

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over ½ million cases being reported in 1990.

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

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

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

(15) The findings noted above in (C)(1) to (14) raise substantial governmental concerns.

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

(17) The enactment of R.C. Chapter 3768. will promote the general welfare, health, morals, and safety of the citizens of Ohio.

COMMENT

1. R.C. 2907.01(E) defines "harmful to juveniles" as that quality of any material or performance describing or representing nudity, sexual conduct, sexual

excitement, or sado-masochistic abuse in any form to which all of the following apply:

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

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

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

R.C. 2907.01(F) provides that when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

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

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

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

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of

which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

2. The First Amendment to the United States Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 11 of Article I, Ohio Constitution, provides as follows:

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-25-05	pp. 83-84
Reported, H. Civil & Commercial Law	04-14-05	p. 669
Passed House (92-5)	04-27-05	pp. 721-722

H0023-PH-126.doc/jc

