



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Sub. H.B. 23*

126th General Assembly
(As Reported by S. Rules)

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

Criminal offenses of "permitting unlawful operation of viewing booths depicting sexual conduct," "permitting a juvenile on the premises of an adult entertainment establishment," and "use by a juvenile of false information to enter an adult entertainment establishment"

- Prohibits persons having custody, control, or supervision of a "commercial establishment" (see below), 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; provides that a violation of this prohibition is the offense of "permitting unlawful operation of viewing booths depicting sexual conduct," a misdemeanor of the first degree; provides affirmative defenses for a person charged with a violation of this prohibition; and defines for use in this provision, "commercial establishment" to mean an entity that is open to the public and that either: (1) 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) has as a principal business purpose the sale, rental, or

* This analysis was prepared before the report of the Senate Rules Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

viewing of visual materials or performances depicting sexual conduct (R.C. 2907.38 and R.C. 2907.01).

- Prohibits a person from knowingly allowing an individual, including, but not limited to, a patron, customer, or employee, who is under the age of 18 on the premises of an "adult entertainment establishment" (see below); prohibits an individual under the age of 18 from knowingly giving or showing false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an "adult entertainment establishment"; provides that a violation of the first prohibition is the offense of "permitting a juvenile on the premises of an adult entertainment establishment," a misdemeanor of the first degree, and that a violation of the second prohibition is the offense of "use by a juvenile of false information to enter an adult entertainment establishment," a delinquent act that would be a misdemeanor of the fourth degree if committed by an adult; provides affirmative defenses for a person charged with a violation of the first prohibition; defines for use in this provision, "adult entertainment establishment" to mean 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 (defines the terms used in this definition); and provides that 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. 2907.39, R.C. 2151.022, 2152.02(F), and 4301.25).

Township regulation of adult entertainment establishments

- Repeals 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 (repeal of existing R.C. 503.51 to 503.59, 503.65, and 503.99).
- Replaces the provisions described in the preceding dot point that it repeals with a provision that grants broader, home rule type authority to townships to regulate adult entertainment establishments within their limits specifies (in a provision patterned after the municipal home rule language of Section 3, Article XVIII, Ohio Constitution) that all

townships have authority to exercise all powers of local self-government regarding the operation of adult entertainment establishments within their limits and to enforce within their limits any local police, sanitary, and similar regulations regarding the operation of adult entertainment establishments that are not in conflict with general laws; specifies that the 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 be employed by such an establishment; specifies that the authority granted is to be exercised by the adoption of resolutions and that the resolutions may be criminal in nature or provide civil sanctions for violations of the regulations; provides that no regulation adopted under authority of this provision may be in conflict with any provision in R.C. Chapter 4303., the Liquor Permit Law, or with any rule adopted by the Division of Liquor Control pursuant to that Chapter, that regulates establishments that hold a liquor permit (R.C. 503.51 and 503.52).

- Specifies that the authority under the provision described in the prior dot point applies to all townships, including those that have adopted a limited home rule government under R.C. Chapter 504., and that, for the home rule townships, the authority is in addition to the powers and authority granted under that Chapter; provides that, if there is a conflict between a resolution adopted under the authority granted in this provision and a municipal ordinance or resolution, the municipal ordinance or resolution prevails; that, if there is a conflict between a resolution adopted under that authority and a county resolution, the township resolution prevails; prescribes how the proceeds from criminal and civil sanctions imposed for violations of regulations adopted under authority of the provision are to be used; and enacts provisions that address the commencement of civil actions for injunction or for nuisance abatement regarding violations of the regulations and for defense in court of challenges to the regulations (see the third succeeding dot point) (R.C. 503.51, 503.52, and 504.04).
- Provides that resolutions of the type described in the preceding two dot points may be proposed by initiative petition by the electors of a township and adopted by election by those 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, subject to four

specified exceptions carried over from existing law (R.C. 503.53, renumbered from existing R.C. 503.29).

- Related to the provisions described above in the first, second, and third preceding dot points, expands the jurisdiction of municipal courts and county courts to grant them jurisdiction over violations of township resolutions adopted under authority of those provisions, specifies that violations of any such township resolution that creates a criminal offense or imposes criminal penalties is to be treated as a criminal case, and provides for the distribution of fines paid into such courts for violations of any such ordinance (currently generally treated as civil cases) (R.C. 1901.182, 1901.31(F), 1907.012, and 1907.20(C)).

Civil actions for injunction and nuisance abatement regarding violations of township resolutions regulating adult entertainment establishments; representation by prosecuting attorney in those actions or actions challenging the validity of the resolutions

- Related to the provisions described above in the third and fourth preceding dot points, provides that, if a township has adopted one or more resolutions under R.C. 503.52(A) regarding the operation of adult entertainment establishments or if a township resolution of that nature has been adopted pursuant to the initiative petitions contained in R.C. 503.53, all of the following apply: (1) if the validity of the resolution is challenged in any court or tribunal, the township may request the prosecuting attorney of the county in which the township is located to prosecute and defend on behalf of the township in the trial and argument of the challenge to the validity of the resolution, (2) if the resolution is being or is about to be violated, the township in which the violation is taking place may request the prosecuting attorney of the county in which the township is located to prosecute and defend on behalf of the township a civil action to enjoin the violation, and, if the township does not request this, the legal counsel of the township, if other than the prosecuting attorney, may prosecute and defend a civil action to enjoin the violation, and (3) the township may request the prosecuting attorney of the county in which the township is located to prosecute and defend on behalf of the township a civil action under R.C. Chapter 3767., the Nuisance Abatement Law, to abate as a nuisance any place in the unincorporated area of the township at which the resolution has been or is being violated, and, if the township does not request this, the legal counsel of the township, if other than the prosecuting attorney, may prosecute and

defend an action under that Chapter for that purpose (R.C. 503.52(E) and 504.15(A) and (D)).

- Specifies that, upon a request made as described in clause (1), (2), or (3) of the preceding dot point, the prosecuting attorney must perform the service requested without charge to the township for which the duty or service is performed (R.C. 309.09(B)(2)).
- Specifies that the provisions described in the two preceding dot points apply regarding all townships, including townships that have adopted a limited home rule government pursuant to R.C. Chapter 504. and regardless of whether a township that has so adopted a limited home rule government has entered into a contract with the prosecuting attorney for services or has appointed a law director (R.C. 309.09(B)(2) and 503.52(E)).

Modification of county or township zoning procedures to ensure compliance with constitutional requirements

- 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 (R.C. 303.02(B) and 519.02).

Expedited appeal procedures regarding denial of application for, or suspension or revocation of, an adult entertainment establishment-related license or permit

- 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 (see above) or as similarly defined by a political subdivision (R.C. 2506.05, 2506.06, 2506.07, and 2506.08) and limits the application of existing provisions regarding appeals of final orders, adjudications, or decisions of an officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state or administrative-related appeals to appeals other than the expedited appeals described in the preceding sentence (R.C. 2505.08, 2506.01, 2506.02, 2506.03, and 2506.04).

Statement of findings and intent of the General Assembly

- Specifies the General Assembly's findings and intent in regard to the bill's enactment of the state criminal offenses of "permitting unlawful operation of viewing booths depicting sexual conduct," "permitting a juvenile on the premises of an adult entertainment establishment," and "use by a juvenile of false information to enter an adult entertainment establishment," as described above, and in regard to the bill's grant of expanded authority for the regulation of adult entertainment establishments by local governments (Section 3).

HISTORY

ACTION	DATE
Introduced	01-25-05
Reported, H. Civil & Commercial Law	04-14-05
Passed House (92-5)	04-27-05
Re-referred to S. Rules	10-25-05
Reported, S. Rules	---

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