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Final Analysis
Legislative Service Commission

Am. Sub. H.B. 23
126th General Assembly
(As Passed by the General Assembly)

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

Sens. Schuring, Prentiss, Zurz, Roberts, Fedor, Hottinger, Austria, Jacobson, Harris, Amstutz, Cates, Clancy, Dann, Gardner, Goodman, Kearney, Miller, R., Niehaus, Schuler, Wachtmann, Grendell

Effective date: August 17, 2006

ACT 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.
- 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.
- Repeals provisions in the Township Law pertaining to township regulation of adult cabarets and adult-oriented businesses and replaces the repealed provisions with provisions authorizing township regulation of adult entertainment establishments.

- Provides that a township may request the prosecuting attorney of the county in which the township is located to prosecute and defend a civil action on behalf of the township to enjoin a violation of a township resolution regulating the operation of an adult entertainment establishment or to abate an offending adult entertainment establishment as a nuisance and requires the prosecuting attorney to provide the requested service without charge to the township.
- Provides that the act'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.
- 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.
- Requires the Attorney General to provide legal guidance and assistance to a township in developing, formulating, and drafting resolutions regulating the operation of adult entertainment establishments upon the request of the township, without charge to the township.
- Provides that a township may request the prosecuting attorney of the county in which the township is located to prosecute and defend a civil action on behalf of the township to any challenge to the validity of a township resolution regulating the operation of an adult entertainment establishment and requires the prosecuting attorney to provide the requested service without charge to the township.
- Provides that a prosecuting attorney who is prosecuting and defending a challenge to the validity of a township resolution regulating the operation of an adult entertainment establishment may request assistance from the Attorney General in prosecuting and defending the challenge when the action is in federal court and requires the Attorney General to provide the requested assistance without charge to the township if the resolution was drafted in accordance with legal guidance provided by the Attorney General.

- Provides for the disbursement of the proceeds from criminal and civil sanctions imposed for the violation of a township resolution regulating the operation of adult entertainment establishments and from the sale of property seized pursuant to a nuisance abatement action against an adult entertainment establishment.
- Regulates conflicts between a township resolution regulating adult entertainment establishments and a municipal ordinance or resolution or county resolution.
- Expands the jurisdiction of Ohio's municipal courts and county courts to include jurisdiction over a violation of a township resolution adopted under the act by a board of township trustees or by initiative petition.
- 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 the act.

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STATEMENT OF LEGISLATIVE INTENT AND FINDINGS

CONTENT AND OPERATION

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

Prohibition and penalties

The act 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 act 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 act defines the following terms for purposes of its provisions regarding the offense of "permitting unlawful operation of viewing booths depicting sexual conduct" (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 Sex Offenses Law, which are not changed by the act, apply to the act's 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 act enacts new R.C. 503.51, 503.52, 2907.38, and 2907.39, which contain prohibitions, restrictions, penalties, civil remedies, and other regulations and definitions pertaining to adult entertainment establishments. The act replaces provisions in the Township Law that pertain to the regulation of adult cabarets and adult-oriented businesses and that the act repeals with provisions authorizing the regulation of adult entertainment establishments.

Prohibitions, penalties, and restrictions

Allowing underage persons to enter premises

The act 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 the offense of "permitting a juvenile on the premises of an adult entertainment establishment," a misdemeanor of the first degree. Each day a person violates the prohibition constitutes a separate offense. (R.C. 2907.39(B) and (F)(1).)

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. 2907.39(D)):

(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. 2907.39(E)).

Giving false information or identification

The act 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 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. A child who violates the prohibition is designated a "delinquent child." (R.C. 2151.022(D), 2152.02(F), and 2907.39(C) and (F)(2).)

Suspension or revocation of liquor permit

The act 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" (R.C. 4301.25(A)(1)).

Definitions

The act defines the following terms for purposes of the regulation of adult entertainment establishments as described above (R.C. 2907.39(A)) 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. 2907.39(A)(5).)

(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. 2907.39(A)(4)).

(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. 2907.39(A)(1)).

(4) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment, including a commercial establishment as defined in R.C. 2907.38, 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. 2907.39(A)(2).)

(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. 2907.39(A)(3).)

(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. 2907.39(A)(6)).

(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. 2907.39(A)(7)).

(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 act'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. 2907.39(A)(9).)

(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. 2907.39(A)(13).)

(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. 2907.39(A)(10)).

(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. 290739(A)(12)).

(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. 2907.39(A)(8).)

(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. 2907.39(A)(11)).

(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. 2907.39(A)(15).)

(15) "Specified anatomical areas" means the cleft of the buttocks, anus, male or female genitals, or the female breast (R.C. 2907.39(A)(14)).

Regulation by townships--operation of the act

The act outright repeals the provisions of the former law that authorized townships to regulate and required the registration of adult cabarets, except the provisions generally described in the following sentence, and replaces the former law with the provisions described below. It modifies ongoing provisions on township resolutions proposed by initiative petition and regulating certain adult-oriented businesses.

Resolution by board of township trustees

Under the act, all townships may exercise all powers of local self-government regarding the operation of adult entertainment establishments within the township and may adopt and enforce any local police, sanitary, and similar regulations within the township regarding the operation of adult entertainment establishments that are not in conflict with general laws. The township's authority must be exercised through the adoption of regulations. 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 an establishment's 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).)

The act grants townships the same rights, powers, and duties pursuant to the authority granted in the preceding paragraph as municipal corporations have under Section 3 of Article XVIII of the Ohio Constitution relative to a municipal corporation's authority to exercise powers of local self-government and to adopt and enforce local police, sanitary, and similar regulations, except to the extent that the rights, powers, and duties that the municipal corporations have by the municipal corporations' nature clearly are inapplicable to townships and the exercise by townships of the authority granted under the act. If a township has adopted a limited home rule government pursuant to R.C. Chapter 504., the township may exercise this authority in addition to the powers and authority granted to the township under R.C. Chapter 504. In the case of a conflict between

any resolution enacted by a board of township trustees pertaining to the operation of adult entertainment establishments and a municipal ordinance or resolution, the ordinance or resolution enacted by the municipal corporation prevails. In the case of a conflict between the township's resolution and a county resolution, the resolution adopted by the board of township trustees prevails. (New R.C. 503.52(A), (B)(1), and (C) and R.C. 504.04(A)(4) and (B)(1).)

The act provides that the resolutions a township adopts may include resolutions that create one or more criminal offenses and impose criminal penalties related to the operation of adult entertainment establishments or that provide for civil sanction for violations of regulations established by resolution. All proceeds that are paid to the township from criminal and civil sanctions for a violation of a regulation established by township resolution 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(A) and (D).)

The Attorney General must provide legal guidance and assistance to a township in developing, formulating, and drafting a resolution regarding the operation of adult entertainment establishments, as authorized by the act, upon the request of any township. The Attorney General must provide these services without charge to the township. (New R.C. 503.52(B)(2).)

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 by the act.

Resolution by initiative petition

The act 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 follows (R.C. 503.53(A), renumbered from former 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.

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

(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 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 a civil action on behalf of the township to enjoin the violation. If the township does not request the county's prosecuting attorney to prosecute and defend an action to enjoin the violation, the township's own legal counsel may prosecute and defend a civil action to enjoin the violation. (New R.C. 503.52(E)(1)(a).)

A township also may request the prosecuting attorney of the county in which the township is located to prosecute or defend a civil action on behalf of the township under the Nuisance Abatement Law, R.C. Chapter 3767., to abate as a nuisance any place in the unincorporated area of the township at which a resolution adopted by the board of township trustees or by initiative petition as described above is being or has been violated. If the township does not request the prosecuting attorney to prosecute and defend an action under the Nuisance Abatement Law, a township's legal counsel may prosecute and defend an action under the Nuisance Abatement Law for that purpose. All proceeds from the sale or 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(E)(1)(b).)

The prosecuting attorney of the county in which a township is located must prosecute and defend either action described in the two preceding paragraphs at the request of the township without charge to the township for which the service is performed. The provisions in the two preceding paragraphs apply to all townships, including townships that have adopted a limited home rule government pursuant to R.C. Chapter 504. and regardless of whether the township that has adopted a limited home rule government has entered into a contract with the prosecuting attorney or has appointed a law director. (New R.C. 503.52(E)(2) and R.C. 309.09(B)(2) and 504.15.)

The act expands the jurisdiction of Ohio's municipal courts and county courts by giving the courts jurisdiction over violations of township resolutions adopted under the act by a board of township trustees or by initiative petition. The act also specifies that violations of a township resolution that creates a criminal offense or imposes criminal penalties must be treated by the courts as a criminal case. The clerk of a municipal court or county court must disburse all fines received for violations of these township resolutions into the treasury of the township whose resolution was violated, with the exception of the clerks of the Hamilton county, Lawrence county, and Ottawa county municipal courts who must deposit 50% of the fines received for violations of the township resolutions into the treasury of the county. (R.C. 1901.182, 1901.31(F), 1907.012, and 1907.20(C).)

Challenge to the validity of a resolution

The act provides that if a township has adopted one or more resolutions under the act regarding the operation of adult entertainment establishments or one or more resolutions have been adopted by initiative petition as described above and the validity of a resolution is challenged, 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 in any court or tribunal of the challenge to the validity of the resolution. Upon the township's request, the prosecuting attorney must prosecute and defend the challenge to the validity of the resolution on behalf of the township without charge to the township. This paragraph applies to all townships, including townships that have adopted a limited home rule government pursuant to R.C. Chapter 504. and regardless of whether the township that has adopted a limited home rule government has entered into a contract with the prosecuting attorney or has appointed a law director. (New R.C. 503.52(E)(1)(c) and (E)(2) and R.C. 309.09(B)(2) and 504.15.)

If a prosecuting attorney is prosecuting and defending a challenge to the validity of a resolution pursuant to the request of a township and the challenge is before a federal court, the prosecuting attorney may request the Attorney General to assist the prosecuting attorney in prosecuting and defending the challenge. If

the prosecuting attorney makes the request, the Attorney General is required to assist the prosecuting attorney, but only if the resolution was drafted in accordance with legal guidance provided by the Attorney General (see "**Resolution by board of township trustees**," above). The Attorney General must provide this assistance without charge to the township. (New R.C. 503.52(E)(2) and R.C. 309.09(B)(2)(a)(i).)

Zoning procedures

The act 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 act, 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

Overview

The act creates 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 act or as similarly defined by a political subdivision. The expedited procedures are not applicable to appeals of other final orders, adjudications, or decisions of officers, tribunals, authorities, boards, bureaus, commissions, departments, or other divisions of political subdivisions of the state or to administrative-related appeals, which will continue to be governed by the preexisting provisions of R.C. 2505.08 and 2506.01 through 2506.04. (R.C. 2505.08, 2506.01(A), 2506.02, 2506.03(A), and 2506.04.)

Appeal of license or permit decision

The act provides that except as modified by other provisions of the act contained in R.C. 2506.05 to 2506.08, every 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 in the act 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. The act makes a preexisting definition of "final order, adjudication, or decision" in R.C. 2506.01 (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") applicable to all of R.C. Chapter 2506., including the act's expedited appeal provisions. (R.C. 2506.01 and 2506.05(A)(1).)

In addition to appeals brought as described in the preceding paragraph, a court of common pleas may hear appeals under the act 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)(2) and (D).)

Expedited appeal and hearing

An appellant seeking to have an appeal heard under the act'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 after receiving notice 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 the unchanged appeal procedures in R.C. 2506.01 to 2506.04. (R.C. 2506.05(B) and (C).)

Filing of transcript

Within five days after receiving notice of the 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 the following applies (R.C. 2506.07(A)):

(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 in 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 act provides that in enacting R.C. 503.51, 503.52, 2907.38, and 2907.39 (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 by the state and expanded authority for reasonable regulation of adult entertainment establishments by local governments 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 by regulating adult entertainment establishments and by expanding the

authority of local governments to regulate adult entertainment establishments 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 do not adequately protect the health, safety, and general welfare of the people of Ohio and that expanded local government authority to regulate adult entertainment establishments is necessary.

(8) It is not the intent of the General Assembly in enacting this act to suppress or to authorize the suppression of any speech activities protected by the First Amendment but to enact content-neutral statutes that expand local government authority to address 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 new R.C. 503.51 and 503.52 and R.C. 2907.38 and 2907.39 to regulate adult entertainment establishments and to expand the authority of local governments 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 regulations to prevent the deleterious secondary effects of adult entertainment establishments within Ohio. The provisions of new R.C. 503.51 and 503.52 and R.C. 2907.38 and 2907.39 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 new R.C. 503.51 and 503.52 and R.C. 2907.38 and 2907.39 to restrict or deny, or authorize the restriction or denial of, access by adults to sexually oriented materials protected by the First Amendment, or to deny, or to authorize the denial of, 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 new R.C. 503.51 and 503.52 and R.C. 2907.38 and 2907.39 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. 2907.39 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 new R.C. 503.51 and 503.52 and R.C. 2907.38 and 2907.39 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
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	03-15-06
Passed Senate (32-0)	03-15-06
House concurred in Senate amendments (95-1)	03-29-06

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