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HAND DELIVERED

Hon. Jim Petro
Ohio Attorney General
State Office Tower
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428

Dear Attorney General Petro:

Pursuant to R.C. 3519.01, enclosed please find the following: (i) a written Petition consisting of 211 part-petitions containing 3,280 signatures of purported qualified electors; (ii) the full text of a law (entitled "Community Defense Act") to be proposed by Initiative Petition, and (iii) a proposed summary of the law for your examination and certification.

Please direct all correspondence relating to the Petition to the undersigned.

Thank you.

Sincerely,



Phil Burress

ATTORNEY GENERALS OFFICE

AUG 11 2006

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CONSTITUTIONAL OFFICES

enclosures

**PROPOSED SUMMARY
OF
LAW PROPOSED BY INITIATIVE PETITION FIRST
TO BE SUBMITTED TO THE GENERAL ASSEMBLY**

(Submitted to the Attorney General Pursuant to R.C. 3519.01)

The law proposed by this Initiative Petition, entitled the Community Defense Act (hereafter, the "Act") establishes a class of businesses, referred to as "sexually oriented businesses," and proscribes certain activities of those businesses, their employees and their patrons.

More specifically, the Act prohibits a sexually oriented business from being open for business between midnight and 6:00 a.m. on any day. The Act excludes from this prohibition a sexually oriented business that has obtained a liquor permit, allowing that business to remain open until the time specified in the liquor permit, but prohibiting that business from presenting any "sexually oriented entertainment activity" between the hours of midnight and 6:00 a.m.

The Act also prohibits an employee of a sexually oriented business, while on the premises of that sexually oriented business and either nude or semi-nude, from (i) appearing in the view of the patrons of the sexually oriented business unless the employee is at least six feet from all patrons and on a stage at least two feet above the floor, (ii) touching any patrons or their clothing, and (iii) touching other employees who are nude or semi-nude. The Act also prohibits patrons of a sexually oriented business from touching any person on the premises of the sexually oriented business who is nude or semi-nude, and prohibits an employee of a sexually oriented business who regularly appears nude or semi-nude on the premises of that sexually oriented business from being within six feet of a patron while on the premises of that sexually oriented business.

The Act provides that whoever violates any of the Act's prohibitions is guilty of a misdemeanor of the first degree.

The Act defines the various kinds of "sexually oriented businesses" that are subject to the law, including "adult bookstores," "adult cabarets," and "sexual encounter centers," to name a few. The Act also defines other key terms, such as "sexually oriented entertainment activity," "nude," "semi-nude," "employee" and "patron."

The Act provides that it is to be construed in such a manner so as to accomplish its stated purpose, which is to promote the health, safety and general welfare of the people of Ohio by preventing the negative secondary effects of sexually oriented businesses, such as lewdness, public indecency, prostitution, illegal use and trafficking of drugs, blight and sexual crimes. The Act identifies many of the numerous studies, reports and court opinions which document the adverse secondary effects of sexually oriented businesses, and which justify the Act's restrictions on such businesses.

In terms of its effect on local government, the Act would preempt all rules, regulations, resolutions, codes, and ordinances of local governments that are less restrictive than the Act, but it would not preempt or prevent local governments from enacting sexually oriented business laws or regulations that are as restrictive or more restrictive than the Act.

Finally, under the severability clause, if any provision of the Act is held invalid by a court, the remaining provisions would remain in effect.

FULL TEXT OF LAW TO BE PROPOSED BY INITIATIVE PETITION

(Submitted to Attorney General Pursuant to R.C. 3519.01)

Be it Enacted by the People of the State of Ohio:

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

3768.01. Sexually oriented business regulations

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

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

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

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

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

(c) While in the view of any patron, touch any other person who is nude or semi-nude;

(2) No patron knowingly shall touch any employee while that employee is nude or semi-nude, or touch the clothing or costume of any employee while that employee is nude or semi-nude;

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

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

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

3768.02. Definitions.

As used in this chapter:

(A) "Adult Bookstore" or "Adult Video Store" means a commercial establishment that has as a significant or substantial portion of its stock-in-trade or inventory 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, for any form of consideration, of any of the following: 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.

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

(1) Persons who appear in a state of nudity or semi-nudity; or

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

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

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

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

(F) "Nudity," "Nude" or "State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

(G) "Operate" means to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises.

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

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

(2) a person who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises.

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

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

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

(L) "Semi-Nude" or "State of Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

(M) “Sexual Device” means any three dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

(N) “Sexual Device Shop” means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to their premises by reason of age.

(O) “Sexual Encounter Center” means a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is nude or semi-nude.

(P) “Sexually oriented business” means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motion picture theater,” a “sexual device shop,” or a “sexual encounter center.” For purposes of this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

(Q) “Sexually Oriented Entertainment Activity” means the sale, rental, or exhibition, for any form of consideration, of books, films, video cassettes, magazines, visual images, or live performances which are characterized by an emphasis on the exposure or display of any specified anatomical areas or specified sexual activity.

(R) “Specified Anatomical Areas” means and includes human genitals, pubic region, buttocks, and female breast below a point immediately above the top of the areola.

(S) “Specified Sexual Activity” means intercourse, oral copulation, masturbation, sodomy, or excretory functions as a part of or in connection with any of these activities.

3768.03 Rationale and findings; construction

(A) It is the purpose of this chapter to promote the health, safety, and general welfare of the people of Ohio by establishing reasonable regulations to prevent the deleterious secondary effects of sexually oriented businesses. The regulations in this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials.

(B) The prohibitions in this chapter are based upon and justified by the adverse secondary effects of sexually oriented businesses identified in numerous judicial decisions and reports concerning such secondary effects including, but not limited to: *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (*en banc*); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *511 Detroit Street, Inc. v. Kelley*, 807 F.2d 1293 (6th Cir. 1986); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Richland Bookmart, Inc. v. Nichols*, 278 F.3d 570 (6th Cir. 2002); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *In re Tenn. Public Indecency Statute*, Nos. 96-6512, 96-6573, 97-5924, 97-5938, 1999 U.S. App. LEXIS 535 (6th Cir. Jan. 13, 1999); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *City of Chattanooga v. Cinema 1, Inc.*, 150 S.W.3d 390 (Tenn. Ct. App. 2004); *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville & Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Kentucky Restaurant Concepts, Inc. v. City of Louisville & Jefferson County*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Ctr. for Fair Public*

Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 2003); *City of Cleveland v. Daher*, 2000 Ohio App. LEXIS 5937 (Ohio Ct. App. 2000); *State ex rel. Nasal v. BJS No. 2, Inc.*, 127 Ohio Misc. 2d 101 (Ct. Comm. Pleas 2003); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); and Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; New York, New York Times Square - 1994; Minneapolis, Minnesota (Holsopple Report) - 1998; Michigan Legislature (Sherman Testimony) - 2000; which support the following findings:

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

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

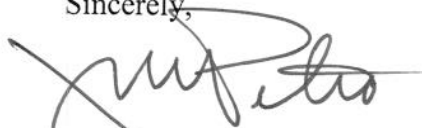
(C) The provisions of this chapter shall be construed so as to further the purposes of this chapter as set forth in division (A) of this section.

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

Section 2. Severability. This chapter and each section, division and provision hereof is hereby declared to be independent such that if any such section, division or provision, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections, divisions or provisions and the application of such sections, divisions or provisions to any person or circumstances other than those to which it is held invalid shall not be affected thereby. It is hereby declared that such sections, divisions and provisions would have been enacted independently of such section, divisions or provision so known to be invalid.

Once I receive a reply from the Ohio Ballot Board, I will file with you a verified copy of the proposed initiated statute with its summary and my certification.

Sincerely,



JIM PETRO
Attorney General

JMP:rnc

Enclosure

cc: Chief Elections Counsel, Secretary of State