

AN ACT

To amend section 503.52 and to enact sections 715.55 and 2907.40 of the Revised Code to restrict the hours of operation of sexually oriented businesses, to prohibit patrons and employees of a sexually oriented business who are not immediate family members from touching each other while on the premises of that business and while the employee is nude or seminude, and to require the state to indemnify a township or municipal corporation for liability incurred in enforcing a resolution or ordinance that regulates adult entertainment establishments, is adopted in conformance with the Attorney General's guidance, and is found by a court to be unconstitutional or otherwise legally defective.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 503.52 be amended and sections 715.55 and 2907.40 of the Revised Code be enacted to read as follows:

Sec. 503.52. (A) Townships have authority to exercise all powers of local self-government regarding the operation of adult entertainment establishments within their limits and to adopt and 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. 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 to be employed by an adult entertainment establishment. The authority granted under this division shall be exercised by the adoption of resolutions and may include the adoption of resolutions that create one or more criminal offenses and impose criminal penalties related to the operation of adult entertainment establishments or may provide for civil sanction for violations of regulations established under the resolutions. Townships have the same rights, powers, and duties pursuant to the authority granted under this division as municipal corporations have under Section 3, Article XVIII, Ohio Constitution relative to their authority to exercise powers of local self-government and to adopt and enforce within their limits local police, sanitary, and similar regulations, except to the extent that the rights, powers, and duties that the municipal corporations have by their nature clearly are inapplicable to townships and to the exercise by townships of their authority granted under this division. No regulation adopted under authority of this division shall be in conflict with any provision in Chapter 4303. of the Revised Code, or with any rule adopted by the division of liquor control pursuant to that chapter, that regulates establishments that hold a liquor permit.

(B)(1) The authority of a township granted under division (A) of this section applies to all townships. If a township has adopted a limited home rule government pursuant to Chapter 504. of the Revised Code, the authority granted under division (A) of this section is in addition to the powers and authority granted to the township under Chapter 504. of the Revised Code.

(2) Upon the request of any township, the attorney general shall provide legal guidance and assistance to the township in developing, formulating, and drafting a resolution regarding the operation of adult entertainment establishments of a type described in division (A) of this section. The attorney general shall provide this service without charge to the township for which the service is performed.

(C) In case of conflict between any resolution enacted by a board of township trustees under the authority granted under division (A) of this section and a municipal ordinance or resolution, the ordinance or resolution enacted by the municipal corporation prevails. In case of conflict between any resolution enacted by a board of township trustees under the authority granted under division (A) of this section and a county resolution, the resolution enacted by the board of township trustees prevails.

(D) All proceeds from criminal and civil sanctions for violation of a regulation established by a township under a resolution adopted under division (A) of this section that are paid to the township shall 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.

(E)(1)(a) When it appears that a resolution adopted under division (A) of this section or section 503.53 of the Revised Code 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. If the township does not request the prosecuting attorney to prosecute and defend an action to enjoin the violation, the legal counsel of that township, if other than the prosecuting attorney, may prosecute and defend a civil action to enjoin the violation.

(b) A 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 Chapter 3767. of the Revised Code to abate as a nuisance any place in the unincorporated area of the township at which a resolution adopted under division (A) of this section or section 503.53 of the Revised Code is being or has been violated. If the township does not request the prosecuting attorney to prosecute and defend an action under that chapter, the legal counsel of the township, if other than the prosecuting attorney, may prosecute and defend an action under that chapter for that purpose. All proceeds from the sale of personal property or contents seized pursuant to the action shall 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 division (A) of section 3767.06 of the Revised Code, 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 shall be deposited into the township treasury and credited to the general fund.

(c) If a township has adopted one or more resolutions regarding the operation of adult entertainment establishments pursuant to the authority that is granted under division (A) of this section or if a township resolution of that nature has been adopted under section 503.53 of the Revised Code and the validity of the 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.

(2) Division (E)(1) of this section applies regarding all townships, including townships that have adopted a limited home rule government pursuant to Chapter 504. of the Revised Code and regardless of whether a township that has so adopted a limited home rule government has entered into a contract with the prosecuting attorney as described in division (B) of section 504.15 of the Revised Code or has appointed a law director as described in division (A) of that section.

Upon the request of any township in the county served by the prosecuting attorney made pursuant to division (E)(1)(a), (b), or (c) of this section, the prosecuting attorney shall prosecute and defend in the action or proceeding as requested, as specified in division (B)(2) of section 309.09 of the Revised Code, without charge to the township for which the service is performed.

If a prosecuting attorney is prosecuting and defending a challenge to the validity of a resolution of a township pursuant to a request made pursuant to division (E)(1)(c) of this section and if 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, and, upon the prosecuting attorney's making of such a request, the attorney general shall assist the prosecuting attorney in performing that service if the resolution was drafted in accordance with legal guidance provided by the attorney general as described in division (B)(2) of this section. The attorney general shall provide this assistance without charge to the township for which the service is performed. If a township adopts a resolution without the legal guidance of the attorney general, the attorney general is not being required to provide assistance as described in this division to a prosecuting attorney.

(F) Except as otherwise provided in this division, the state shall indemnify a township and its trustees from liability incurred in the enforcement of a resolution that is authorized by this section, that was drafted in accordance with legal guidance provided by the attorney general as described in division (B)(2) of this section, and that a court finds to be unconstitutional or otherwise legally defective by paying any judgment in, or amount negotiated in settlement of, any civil action arising from the enforcement of the resolution. The state shall not indemnify a township or its trustees until all appeals have been exhausted or the action has otherwise been finally resolved.

The state shall not indemnify a township or its trustees for any of the following or to the extent that any of the following apply:

- (1) Any part of the judgment or settlement that represents damages that are covered by a policy of insurance for civil liability;
- (2) Any part of the judgment or settlement that is based upon an officer or employee of the township acting manifestly outside the scope of the officer's or employee's employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner;
- (3) Any part of the judgment that is for punitive damages;
- (4) Any part of a consent judgment or settlement that the attorney general determines is unreasonable.

Sec. 715.55. (A) As used in this section, "adult entertainment establishment" has the same meaning as in section 2907.39 of the Revised Code.

(B) The legislative authority of a municipal corporation may request the attorney general to provide legal guidance and assistance in developing, formulating, and drafting an ordinance regarding the operation of adult entertainment establishments that does not conflict with general laws, with any provision in Chapter 4303. of the Revised Code, or with any provision in a rule adopted by the division of liquor control pursuant to that chapter that regulates establishments that hold a liquor permit. Upon the request of a legislative authority pursuant to this division, the attorney general shall provide legal guidance and assistance to the municipal corporation in developing, formulating, and drafting an ordinance regarding adult entertainment establishments. The ordinance may include, but need not be limited to, antinudity restrictions, limitations on hours of operation, interior configuration requirements, and requirements that an adult entertainment establishment and its employees obtain licenses or permits to operate as an adult entertainment establishment or to be employed by an adult entertainment establishment. The ordinance may create one or more criminal offenses and impose criminal penalties related to the operation of adult entertainment establishments or may provide for civil sanctions for violations of the ordinance.

(C) Except as otherwise provided in this division, the state shall indemnify a municipal corporation and the members of the municipal corporation's legislative authority from liability incurred in the enforcement of an ordinance that is authorized by this section, that was drafted in accordance with legal guidance provided by the attorney general as described in division (B) of this section, and that a court finds to be unconstitutional or otherwise legally defective by paying any judgment in, or amount negotiated in settlement of, any civil action arising from the enforcement of the ordinance. The state shall not indemnify a municipal corporation or the members of the municipal corporation's legislative authority until all appeals have been exhausted or the action has otherwise been finally resolved.

The state shall not indemnify a municipal corporation or the members of the municipal corporation's legislative authority for any of the following or to the extent that any of the following apply:

- (1) Any part of the judgment or settlement that represents damages that are covered by a policy of insurance for civil liability;
- (2) Any part of the judgment or settlement that is based upon an officer or employee of the municipal corporation acting manifestly outside the scope of the officer's or employee's employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner;
- (3) Any part of the judgment that is for punitive damages;
- (4) Any part of a consent judgment or settlement that the attorney general determines is unreasonable.

Sec. 2907.40. (A) As used in this section:

(1) "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 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.

(2) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or other similar commercial establishment, regardless of whether alcoholic beverages are served, that regularly features individuals who appear in a state of nudity or seminudity.

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

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

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

(6) "Nudity," "nude," or "state of nudity" has the same meaning as in section 2907.39 of the Revised Code.

(7) "Operator" means any individual 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.

(8) "Patron" means any individual on the premises of a sexually oriented business except for any of the following:

(a) An operator or an employee of the sexually oriented business;

(b) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;

(c) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee's or volunteer's duties as a public employee or volunteer.

(9) "Premises" means the real property on which the sexually oriented business is located and all appurtenances to the real property, including, but not limited, to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the sexually oriented business.

(10) "Regularly" means consistently or repeatedly.

(11) "Seminude" or "state of seminudity" has the same meaning as in section 2907.39 of the Revised Code.

(12) "Sexual device" means any three-dimensional object designed and marketed for stimulation of the male or female human genitals or anus or female breasts or for sadomasochistic use or abuse of oneself or others, including, but not limited to, dildos, vibrators, penis pumps, and physical representations of the human genital organs, but not including devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

(13) "Sexual device shop" means a commercial establishment that regularly features sexual devices, but not including any pharmacy, drug store, medical clinic, or establishment primarily dedicated to providing medical or healthcare products or services, and not including any commercial establishment that does not restrict access to its premises by reason of age.

(14) "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 individuals of the opposite sex when one or more of the individuals is nude or seminude.

(15) "Sexually oriented business" means an adult bookstore, adult video store, adult cabaret, adult motion picture theater, sexual device shop, or sexual encounter center, but does not include a business solely by reason of its showing, selling, or renting materials rated NC-17 or R by the motion picture association of America.

(16) "Specified anatomical areas" includes human genitals, pubic region, and buttocks and the human female breast below a point immediately above the top of the areola.

(17) "Specified sexual activity" means sexual intercourse, oral copulation, masturbation, or sodomy, or excretory functions as a part of or in connection with any of these activities.

(B) 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 if it does not conduct, offer, or allow sexually oriented entertainment activity in which the performers appear nude.

(C)(1) No patron who is not a member of the employee's immediate family shall knowingly touch any employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or seminude.

(2) No employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.

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

(E) Whoever violates division (C) of this section is guilty of illegal sexually oriented activity in a sexually oriented business. If the offender touches a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the first degree. If the offender does not touch a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the fourth degree.

SECTION 2. That existing section 503.52 of the Revised Code is hereby repealed.