



Bill Analysis

Legislative Service Commission

Sub. S.B. 16
127th General Assembly
(As Passed by the General Assembly)

By initiative

Sen. Amstutz

Reps. Batchelder, Bulp, Domenick, J. Hagan, Hottinger, Huffman, Wagner

Effective date: September 4, 2007; became law without governor's signature

ACT SUMMARY

- Prohibits a sexually oriented business from being open for business between midnight and 6 a.m., except that a sexually oriented business that holds a liquor permit may remain open until the hour specified in the permit if it does not conduct, offer, or allow any sexually oriented entertainment activity in which the performers appear nude.
- Prohibits a patron of a sexually oriented business who is not a member of the employee's immediate family to knowingly touch any employee of the business while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or seminude.
- Prohibits an employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises and while nude or seminude, from knowingly touching 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 allowing 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 employee's clothing.

- Authorizes the legislative authority of a municipal corporation to request the Attorney General's guidance and assistance in drafting an ordinance regulating adult entertainment establishments and requires the Attorney General to provide that guidance upon request.
- Requires the state to indemnify a township, the trustees of a township, a municipal corporation, and the legislative authority of a municipal corporation that adopts a resolution or ordinance regulating adult entertainment establishments in accordance with the Attorney General's legal guidance from liability incurred in the enforcement of the resolution or ordinance if the court finds the resolution or ordinance unconstitutional or otherwise legally defective but prohibits the state from providing such indemnification for any part of a judgment or settlement covered by insurance, resulting from acts manifestly outside the scope of an officer's or employee's responsibilities or from malicious purpose, bad faith, or wanton or reckless behavior, or that is for punitive damages or any part of a consent judgment or settlement that is unreasonable.

CONTENT AND OPERATION

Prohibitions related to sexually oriented business

Definitions

The act defines "sexually oriented business" for use in its prohibitions related to such businesses as 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 (R.C. 2907.40(A)(15)). See **COMMENT 1** for other definitions related to those prohibitions.

Hours of operation

The act prohibits a sexually oriented business from being or remaining open for business

between midnight and 6 a.m. on any day. However, if a sexually oriented business holds a liquor permit, it may remain open until the hour specified in the permit if it does not conduct, offer, or allow sexually oriented entertainment activity in which the performers appear nude. A violation of this prohibition is "illegally operating a sexually oriented business," a misdemeanor of the first degree. (R.C. 2907.40(B) and (D).)

"No-touch" rule

The act prohibits a patron of a sexually oriented business who is not a member of the employee's immediate family from knowingly touching any employee of the business while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or seminude. The act also prohibits an employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that business and while nude or seminude, from knowingly touching 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 allowing 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 employee's clothing. A violation of either prohibition is "illegal sexually oriented activity in a sexually oriented business" and is a misdemeanor of the first degree if the offender touches a specified anatomical area of the patron or employee or the clothing covering a specified anatomical area (includes human genitals, pubic region, and buttocks and the human female breast below a point immediately above the top of the areola). Otherwise, a violation is a misdemeanor of the fourth degree. (R.C. 2907.40(C) and (E).)

Indemnification

Townships

Under continuing law, a township may adopt a resolution regulating adult entertainment establishments. "Adult entertainment establishment" and the terms used in the definition of "adult entertainment establishment" are defined in R.C. 2907.39 (see **COMMENT 2**). Upon the request of a township, the Attorney General must provide without charge legal guidance and assistance to the township in developing, formulating, and drafting a resolution regarding the operation of adult entertainment establishments. (R.C. 503.52 (A) and (B)(2).)

The act requires the state to indemnify a township and its trustees from liability incurred in the enforcement of a resolution that is authorized by R.C. 503.52, that was drafted in accordance with legal guidance provided by the Attorney General, and that a court finds to be unconstitutional or otherwise legally defective. Except as noted below, the state must pay any judgment in, or amount negotiated in settlement of, any civil action arising from the enforcement of the resolution. The state is not permitted to indemnify a township or its trustees until all appeals have been exhausted or the action has otherwise been finally resolved. The state is not permitted to 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. (R.C. 503.52(F).)

Municipal corporations

The act authorizes the legislative authority of a municipal corporation to 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, R.C. Chapter 4303., or any rule adopted by the Division of Liquor Control. Upon such a request, the Attorney General must provide the requested legal guidance and assistance to the municipal corporation. 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.

The act requires the state to 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 the provisions discussed in the prior paragraph, is drafted in accordance with legal advice given by the Attorney General, and that a court finds to be unconstitutional or otherwise legally defective, to the same extent as the state must indemnify a township and its trustees under the act (see "*Townships*," above). (R. C. 715.55.)

COMMENT

1. Definitions:

"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.

"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.

"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.

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

"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.

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

"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.

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

- (1) An operator or an employee of the sexually oriented business;
- (2) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;
- (3) 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.

"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.

"Regularly" means consistently or repeatedly.

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

"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.

"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.

"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.

"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.

2. R.C. 2907.39 defines "adult entertainment establishment" as 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, all of which are also defined in that section. The statute expressly excludes from "adult entertainment establishment" 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.

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. State & Local Gov't & Veterans Affairs	04-17-07
Passed Senate (24-8)	04-17-07
Reported, H. Judiciary	05-15-07
Passed House (73-24)	05-16-07
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