

As Introduced

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Representatives King, Williams

Cosponsors: Representatives Seitz, Click, Manchester, Creech, Gross, Ferguson, Barhorst, Thomas, J., Demetriou, Miller, M., Bird, Stoltzfus, McClain, Kick, Johnson, Lorenz, Willis, Wiggam, Stein, Klopfenstein, Powell, Hall, Lear, Dean, Plummer, Peterson, Claggett, Swearingen, Holmes, Hoops, Pizzulli, Cutrona, Lipps, John, Robb Blasdel, Fowler Arthur, Miller, K., Loychik, Ray, Dobos, Jones

A BILL

To amend sections 2907.39 and 4301.25 of the
Revised Code to prohibit adult cabaret
performances in locations other than adult
cabarets.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2907.39 and 4301.25 of the
Revised Code be amended to read as follows:

Sec. 2907.39. (A) As used in this section:

(1) "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. 16

(2) (a) "Adult bookstore," "adult novelty store," or "adult 17
video store" means a commercial establishment that, for any form 18
of consideration, has as a significant or substantial portion of 19
its stock-in-trade in, derives a significant or substantial 20
portion of its revenues from, devotes a significant or 21
substantial portion of its interior business or advertising to, 22
or maintains a substantial section of its sales or display space 23
for the sale or rental of any of the following: 24

(i) Books, magazines, periodicals, or other printed 25
matter, or photographs, films, motion pictures, video cassettes, 26
compact discs, slides, or other visual representations, that are 27
characterized by their emphasis upon the exhibition or 28
description of specified sexual activities or specified 29
anatomical areas; 30

(ii) Instruments, devices, or paraphernalia that are 31
designed for use or marketed primarily for stimulation of human 32
genital organs or for sadomasochistic use or abuse of self or 33
others. 34

(b) "Adult bookstore," "adult novelty store," or "adult 35
video store" includes a commercial establishment as defined in 36
section 2907.38 of the Revised Code. An establishment may have 37
other principal business purposes that do not involve the 38
offering for sale, rental, or viewing of materials exhibiting or 39
describing specified sexual activities or specified anatomical 40
areas and still be categorized as an adult bookstore, adult 41
novelty store, or adult video store. The existence of other 42
principal business purposes does not exempt an establishment 43
from being categorized as an adult bookstore, adult novelty 44
store, or adult video store so long as one of its principal 45

business purposes is offering for sale or rental, for some form 46
of consideration, such materials that exhibit or describe 47
specified sexual activities or specified anatomical areas. 48

(3) "Adult cabaret" means a nightclub, bar, juice bar, 49
restaurant, bottle club, or similar commercial establishment, 50
whether or not alcoholic beverages are served, that regularly 51
features any of the following: 52

(a) Persons who appear in a state of nudity or seminudity; 53

(b) Live performances that are characterized by the 54
exposure of specified anatomical areas or specified sexual 55
activities; 56

(c) Films, motion pictures, video cassettes, slides, or 57
other photographic reproductions that are distinguished or 58
characterized by their emphasis upon the exhibition or 59
description of specified sexual activities or specified 60
anatomical areas. 61

(4) "Adult cabaret performance" means a performance in a 62
location other than an adult cabaret that is harmful to 63
juveniles or obscene and that features topless dancers; go-go 64
dancers; exotic dancers; strippers; performers or entertainers 65
who exhibit a gender identity that is different from the 66
performer's or entertainer's gender assigned at birth using 67
clothing, makeup, prosthetic or imitation genitals or breasts, 68
or other physical markers; or other similar performers or 69
entertainers who provide entertainment that appeals to a 70
prurient interest, regardless of whether or not the performance 71
is for consideration. 72

(5) "Adult entertainment" means the sale, rental, or 73
exhibition, for any form of consideration, of books, films, 74

video cassettes, magazines, periodicals, or live performances 75
that are characterized by an emphasis on the exposure or display 76
of specified anatomical areas or specified sexual activity. 77

~~(5)~~ (6) "Adult entertainment establishment" means an adult 78
arcade, adult bookstore, adult novelty store, adult video store, 79
adult cabaret, adult motion picture theater, adult theater, nude 80
or seminude model studio, or sexual encounter establishment. An 81
establishment in which a medical practitioner, psychologist, 82
psychiatrist, or similar professional person licensed by the 83
state engages in medically approved and recognized therapy, 84
including, but not limited to, massage therapy, as regulated 85
pursuant to section 4731.15 of the Revised Code, is not an 86
"adult entertainment establishment." 87

~~(6)~~ (7) "Adult motion picture theater" means a commercial 88
establishment where films, motion pictures, video cassettes, 89
slides, or similar photographic reproductions that are 90
distinguished or characterized by their emphasis upon the 91
exhibition or description of specified sexual activities or 92
specified anatomical areas are regularly shown for any form of 93
consideration. 94

~~(7)~~ (8) "Adult theater" means a theater, concert hall, 95
auditorium, or similar commercial establishment that, for any 96
form of consideration, regularly features persons who appear in 97
a state of nudity or seminudity or live performances that are 98
characterized by their emphasis upon the exposure of specified 99
anatomical areas or specified sexual activities. 100

~~(8)~~ (9) "Distinguished or characterized by their emphasis 101
upon" means the dominant or principal character and theme of the 102
object described by this phrase. For instance, when the phrase 103
refers to films "that are distinguished or characterized by 104

their emphasis upon the exhibition or description of specified 105
sexual activities or specified anatomical areas," the films so 106
described are those whose dominant or principal character and 107
theme are the exhibition or description of specified sexual 108
activities or specified anatomical areas. 109

~~(9)(a)~~ (10)(a) "Nude or seminude model studio" means any 110
place where a person, who regularly appears in a state of nudity 111
or seminudity, is provided for money or any other form of 112
consideration to be observed, sketched, drawn, painted, 113
sculptured, photographed, or similarly depicted by other 114
persons. 115

(b) A modeling class or studio is not a nude or seminude 116
model studio and is not subject to this chapter if it is 117
operated in any of the following ways: 118

(i) By a college or university supported entirely or 119
partly by taxation; 120

(ii) By a private college or university that maintains and 121
operates educational programs, the credits for which are 122
transferable to a college or university supported entirely or 123
partly by taxation; 124

(iii) In a structure that has no sign visible from the 125
exterior of the structure and no other advertising indicating 126
that a person appearing in a state of nudity or seminudity is 127
available for viewing, if in order to participate in a class in 128
the structure, a student must enroll at least three days in 129
advance of the class and if not more than one nude or seminude 130
model is on the premises at any one time. 131

~~(10)~~ (11) "Nudity," "nude," or "state of nudity" means the 132
showing of the human male or female genitals, pubic area, vulva, 133

anus, anal cleft, or cleavage with less than a fully opaque 134
covering; or the showing of the female breasts with less than a 135
fully opaque covering of any part of the nipple. 136

~~(11)~~ (12) "Regularly features" or "regularly shown" means 137
a consistent or substantial course of conduct, such that the 138
films or performances exhibited constitute a substantial portion 139
of the films or performances offered as a part of the ongoing 140
business of the adult entertainment establishment. 141

~~(12)~~ (13) "Seminude" or "state of seminudity" means a 142
state of dress in which opaque clothing covers not more than the 143
genitals, pubic region, and nipple of the female breast, as well 144
as portions of the body covered by supporting straps or devices. 145

~~(13)~~ ~~(a)~~ (14) (a) "Sexual encounter establishment" means a 146
business or commercial establishment that, as one of its 147
principal business purposes, offers for any form of 148
consideration a place where either of the following occur: 149

(i) Two or more persons may congregate, associate, or 150
consort for the purpose of engaging in specified sexual 151
activities. 152

(ii) Two or more persons appear nude or seminude for the 153
purpose of displaying their nude or seminude bodies for their 154
receipt of consideration or compensation in any type or form. 155

(b) An establishment where a medical practitioner, 156
psychologist, psychiatrist, or similar professional person 157
licensed by the state engages in medically approved and 158
recognized therapy, including, but not limited to, massage 159
therapy, as regulated pursuant to section 4731.15 of the Revised 160
Code, is not a "sexual encounter establishment." 161

~~(14)~~ (15) "Specified anatomical areas" means the cleft of 162

the buttocks, anus, male or female genitals, or the female 163
breast. 164

~~(15)~~ (16) "Specified sexual activity" means any of the 165
following: 166

(a) Sex acts, normal or perverted, or actual or simulated, 167
including intercourse, oral copulation, masturbation, or sodomy; 168

(b) Excretory functions as a part of or in connection with 169
any of the activities described in division ~~(A) (15) (a)~~ (A) (16) 170
(a) of this section. 171

(17) "Harmful to juveniles" and "obscene" have the same 172
meanings as in section 2907.01 of the Revised Code. 173

~~(B)~~ (B) (1) No person knowingly shall allow an individual, 174
including, but not limited to, a patron, customer, or employee, 175
who is under eighteen years of age on the premises of an adult 176
entertainment establishment. 177

(2) No person, with knowledge of its character or content, 178
shall recklessly engage in an adult cabaret performance in a 179
location other than an adult cabaret. 180

(C) No individual who is under eighteen years of age 181
knowingly shall show or give false information concerning the 182
individual's name or age, or other false identification, for the 183
purpose of gaining entrance to an adult entertainment 184
establishment. 185

(D) A person shall not be found guilty of a violation of 186
division ~~(B)~~ (B) (1) of this section if the person raises as an 187
affirmative defense and if the jury or, in a nonjury trial, the 188
court finds the person has established by a preponderance of the 189
evidence, all of the following: 190

(1) The individual gaining entrance to the adult 191
entertainment establishment exhibited to an operator, employee, 192
agent, or independent contractor of the adult entertainment 193
establishment a driver's or commercial driver's license or an 194
identification card issued under sections 4507.50 and 4507.52 of 195
the Revised Code showing that the individual was then at least 196
eighteen years of age. 197

(2) The operator, employee, agent, or independent 198
contractor made a bona fide effort to ascertain the true age of 199
the individual gaining entrance to the adult entertainment 200
establishment by checking the identification presented, at the 201
time of entrance, to ascertain that the description on the 202
identification compared with the appearance of the individual 203
and that the identification had not been altered in any way. 204

(3) The operator, employee, agent, or independent 205
contractor had reason to believe that the individual gaining 206
entrance to the adult entertainment establishment was at least 207
eighteen years of age. 208

(E) In any criminal action in which the affirmative 209
defense described in division (D) of this section is raised, the 210
registrar of motor vehicles or the deputy registrar who issued a 211
driver's or commercial driver's license or an identification 212
card under sections 4507.50 and 4507.52 of the Revised Code 213
shall be permitted to submit certified copies of the records, in 214
the registrar's or deputy registrar's possession, of the 215
issuance of the license or identification card in question, in 216
lieu of the testimony of the personnel of the bureau of motor 217
vehicles in the action. 218

(F) (1) Whoever violates division ~~(D)~~ (B) (1) of this section 219
is guilty of permitting a juvenile on the premises of an adult 220

entertainment establishment, a misdemeanor of the first degree. 221
Each day a person violates this division constitutes a separate 222
offense. 223

(2) Whoever violates division (B) (2) of this section is 224
guilty of unlawful adult cabaret performance. If the performance 225
involved occurs in the presence of a juvenile under eighteen 226
years of age, except as otherwise provided in this division, a 227
violation of this section is a misdemeanor of the first degree. 228
If the performance involved is obscene, except as otherwise 229
provided in this division, a violation of this section is a 230
felony of the fifth degree. If the performance involved is 231
obscene and a juvenile to whom it is presented is under thirteen 232
years of age, a violation of this section is a felony of the 233
fourth degree. 234

(3) Whoever violates division (C) of this section is 235
guilty of use by a juvenile of false information to enter an 236
adult entertainment establishment, a delinquent act that would 237
be a misdemeanor of the fourth degree if committed by an adult. 238

Sec. 4301.25. (A) The liquor control commission may 239
suspend or revoke any permit issued under this chapter or 240
Chapter 4303. of the Revised Code for the violation of any of 241
the applicable restrictions of either chapter or of any lawful 242
rule of the commission, for other sufficient cause, and for the 243
following causes: 244

(1) Conviction of the holder or the holder's agent or 245
employee for violating division ~~(B)~~ (B) (1) of section 2907.39 of 246
the Revised Code or a section of this chapter or Chapter 4303. 247
of the Revised Code or for a felony; 248

(2) The entry of a judgment pursuant to division (D) or 249

(E) of section 3767.05 of the Revised Code against a permit 250
holder or the holder's agent or employee finding the existence 251
of a nuisance at a liquor permit premises or finding the 252
existence of a nuisance as a result of the operation of a liquor 253
permit premises; 254

(3) Making any false material statement in an application 255
for a permit; 256

(4) Assigning, transferring, or pledging a permit contrary 257
to the rules of the commission; 258

(5) Selling or promising to sell beer or intoxicating 259
liquor to a wholesale or retail dealer who is not the holder of 260
a proper permit at the time of the sale or promise; 261

(6) Failure of the holder of a permit to pay an excise tax 262
together with any penalties imposed by the law relating to that 263
failure and for violation of any rule of the department of 264
taxation in pursuance of the tax and penalties. 265

(B) The liquor control commission shall revoke a permit 266
issued pursuant to this chapter or Chapter 4303. of the Revised 267
Code upon the conviction of the holder of the permit of a 268
violation of division (C) (1) of section 2913.46 of the Revised 269
Code. 270

(C) (1) When the commission considers the length of a 271
suspension of a permit, it may consider the volume of the 272
business of the permit holder, so that the length of the 273
suspension is in proportion to the seriousness of the offense 274
and the permit holder's business in order that the suspension 275
serve as a penalty and a deterrent. Evidence as to the volume of 276
business of the permit holder may be offered by the permit 277
holder or subpoenaed by the commission. 278

(2) When the commission considers the length of a proposed 279
suspension of a permit and the proposed suspension results from 280
an offense that was committed during a compliance check as 281
defined in section 4301.635 of the Revised Code, the commission 282
may consider whether trickery, deceit, or deception was used in 283
the conduct of the compliance check. 284

Section 2. That existing sections 2907.39 and 4301.25 of 285
the Revised Code are hereby repealed. 286