

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 556

Representative Mathews

A BILL

To amend sections 2907.32 and 2907.35 of the
Revised Code to create criminal liability for
certain teachers and librarians for the offense
of pandering obscenity.

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

Section 1. That sections 2907.32 and 2907.35 of the
Revised Code be amended to read as follows:

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Sec. 2907.32. (A) As used in this section:

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(1) "Faculty member" means any person who is tasked with
providing academic research or teaching at a private or public
institution of higher education, as those institutions are
defined in section 3365.01 of the Revised Code.

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(2) "Other person having a proper interest" does not
include a teacher who is not a health or biology teacher or a
school librarian.

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(3) "School librarian" means a librarian employed by a
school district, other public school, as defined in section
3301.0711 of the Revised Code, or chartered nonpublic school and
a librarian employed in a school district public library

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established in accordance with sections 3375.14 to 3375.18 of 19
the Revised Code. 20

(4) "Teacher" has the same meaning as in section 3319.09 21
of the Revised Code and includes an individual who has a teacher 22
certification under section 3301.071 of the Revised Code. 23

(B) No person, with knowledge of the character of the 24
material or performance involved, shall do any of the following: 25

(1) Create, reproduce, or publish any obscene material, 26
when the offender knows that the material is to be used for 27
commercial exploitation or will be publicly disseminated or 28
displayed, or when the offender is reckless in that regard; 29

(2) Promote or advertise for sale, delivery, or 30
dissemination; sell, deliver, publicly disseminate, publicly 31
display, exhibit, present, rent, or provide; or offer or agree 32
to sell, deliver, publicly disseminate, publicly display, 33
exhibit, present, rent, or provide, any obscene material; 34

(3) Create, direct, or produce an obscene performance, 35
when the offender knows that it is to be used for commercial 36
exploitation or will be publicly presented, or when the offender 37
is reckless in that regard; 38

(4) Advertise or promote an obscene performance for 39
presentation, or present or participate in presenting an obscene 40
performance, when the performance is presented publicly, or when 41
admission is charged; 42

(5) Buy, procure, possess, or control any obscene material 43
with purpose to violate division ~~(A) (2)~~ (B) (2) or (4) of this 44
section. 45

~~(B)~~ (C) It is an affirmative defense to a charge under 46

this section, that the material or performance involved was 47
disseminated or presented for a bona fide medical, scientific, 48
~~educational~~, religious, governmental, judicial, or other proper 49
purpose, by or to a physician, psychologist, sociologist, 50
scientist, health or biology teacher, faculty member, person 51
pursuing bona fide studies or research, librarian other than a 52
school librarian, clergyman member of the clergy, prosecutor, 53
judge, or other person having a proper interest in the material 54
or performance. 55

~~(C)~~ (D) Whoever violates this section is guilty of 56
pandering obscenity, a felony of the fifth degree. If the 57
offender previously has been convicted of a violation of this 58
section or of section 2907.31 of the Revised Code, then 59
pandering obscenity is a felony of the fourth degree. 60

Sec. 2907.35. (A) An owner or manager, or agent or 61
employee of an owner or manager, of a bookstore, newsstand, 62
theater, or other commercial establishment engaged in selling 63
materials or exhibiting performances, who, in the course of 64
business: 65

(1) Possesses five or more identical or substantially 66
similar obscene articles, having knowledge of their character, 67
is presumed to possess them in violation of division ~~(A) (5)~~ (B) 68
(5) of section 2907.32 of the Revised Code; 69

(2) Does any of the acts prohibited by section 2907.31 or 70
2907.32 of the Revised Code, is presumed to have knowledge of 71
the character of the material or performance involved, if the 72
owner, manager, or agent or employee of the owner or manager has 73
actual notice of the nature of such material or performance, 74
whether or not the owner, manager, or agent or employee of the 75
owner or manager has precise knowledge of its contents. 76

(B) Without limitation on the manner in which such notice 77
may be given, actual notice of the character of material or a 78
performance may be given in writing by the chief legal officer 79
of the jurisdiction in which the person to whom the notice is 80
directed does business. Such notice, regardless of the manner in 81
which it is given, shall identify the sender, identify the 82
material or performance involved, state whether it is obscene or 83
harmful to juveniles, and bear the date of such notice. 84

(C) Sections 2907.31 and 2907.32 of the Revised Code do 85
not apply to a motion picture operator or projectionist acting 86
within the scope of employment as an employee of the owner or 87
manager of a theater or other place for the showing of motion 88
pictures to the general public, and having no managerial 89
responsibility or financial interest in the operator's or 90
projectionist's place of employment, other than wages. 91

(D) (1) Sections 2907.31, 2907.311, 2907.32, 2907.321, 92
2907.322, 2907.323, and 2907.34 and division (A) of section 93
2907.33 of the Revised Code do not apply to a person solely 94
because the person provided access or connection to or from an 95
electronic method of remotely transferring information not under 96
that person's control, including having provided capabilities 97
that are incidental to providing access or connection to or from 98
the electronic method of remotely transferring the information, 99
and that do not include the creation of the content of the 100
material that is the subject of the access or connection. 101

(2) Division (D) (1) of this section does not apply to a 102
person who conspires with an entity actively involved in the 103
creation or knowing distribution of material in violation of 104
section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 105
2907.323, 2907.33, or 2907.34 of the Revised Code or who 106

knowingly advertises the availability of material of that 107
nature. 108

(3) Division (D)(1) of this section does not apply to a 109
person who provides access or connection to an electronic method 110
of remotely transferring information that is engaged in the 111
violation of section 2907.31, 2907.311, 2907.32, 2907.321, 112
2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code and 113
that contains content that person has selected and introduced 114
into the electronic method of remotely transferring information 115
or content over which that person exercises editorial control. 116

(E) An employer is not guilty of a violation of section 117
2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 118
2907.33, or 2907.34 of the Revised Code based on the actions of 119
an employee or agent of the employer unless the employee's or 120
agent's conduct is within the scope of employee's or agent's 121
employment or agency, and the employer does either of the 122
following: 123

(1) With knowledge of the employee's or agent's conduct, 124
the employer authorizes or ratifies the conduct. 125

(2) The employer recklessly disregards the employee's or 126
agent's conduct. 127

(F) It is an affirmative defense to a charge under section 128
2907.31 or 2907.311 of the Revised Code as the section applies 129
to an image transmitted through the internet or another 130
electronic method of remotely transmitting information that the 131
person charged with violating the section has taken, in good 132
faith, reasonable, effective, and appropriate actions under the 133
circumstances to restrict or prevent access by juveniles to 134
material that is harmful to juveniles, including any method that 135

is feasible under available technology. 136

(G) If any provision of this section, or the application 137
of any provision of this section to any person or circumstance, 138
is held invalid, the invalidity does not affect other provisions 139
or applications of this section or related sections that can be 140
given effect without the invalid provision or application. To 141
this end, the provisions are severable. 142

Section 2. That existing sections 2907.32 and 2907.35 of 143
the Revised Code are hereby repealed. 144