



Aida S. Montano

Bill Analysis
Legislative Service Commission

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Reps. Roman, Reidelbach, Schmidt, Perry, Metzger, Raga, Hagan, Clancy, Seitz, Fessler, McGregor, Schaffer, Young, Faber, Brinkman, Aslanides, Schneider, Gilb, White, Womer Benjamin, Allen, Grendell, Lendrum, Jerse, Collier, Flowers, Williams, Otterman, Webster

BILL SUMMARY

- Modifies the offense of public indecency to prohibit any person from doing any of the following in a *public place*: recklessly appearing in a state of nudity, engaging in masturbation, engaging in sexual conduct, or engaging in conduct that would appear to an ordinary observer to be sexual conduct or masturbation; and defines "nudity" and "public place" for that offense.
- Creates new R.C. Chapter 3768. that contains prohibitions, restrictions, penalties, civil remedies, and other regulations and definitions pertaining to adult entertainment establishments.
- Prohibits a person from knowingly allowing an individual under the age of 21 on the premises of an adult entertainment establishment and prohibits an individual under the age of 21 from knowingly giving or showing false information or identification for the purpose of gaining entrance to an adult entertainment establishment.
- Restricts the hours and days of operation of adult entertainment establishments and specifies prohibitions concerning a nude or semi-nude person in certain adult entertainment establishments keeping a specified distance from, touching, or receiving any pay or gratuity from a patron, customer, or client and concerning a patron, customer, or client in certain adult entertainment establishments giving any pay or gratuity to or purposely touching a nude or semi-nude person or the person's clothing.

- Requires the Attorney General, a county prosecuting attorney, a city director of law, village solicitor, or other similar legal officer of a municipal corporation, or a township law director to commence a civil action for injunctive relief in the court of common pleas of the county in which an alleged violation of any of the prohibitions has occurred or is occurring and requires the court to grant temporary and permanent injunctive relief upon a showing of a violation.
- Authorizes any resident of the county in which a violation of any of the prohibitions has occurred or is occurring to commence a civil action for injunctive relief against the violator; requires the plaintiff to execute a bond; establishes procedures, including an expedited trial, for the action; and requires the court to grant temporary and permanent injunctive relief upon a showing of a violation and to award the plaintiff court costs and reasonable attorney's fees.
- Replaces the existing provisions in the Township Law pertaining to the regulation of adult cabarets and adult-oriented businesses with the regulation of adult entertainment establishments.
- Provides that township regulation of adult entertainment establishments, which may include licensing or permit requirements, may be by resolution adopted by a board of township trustees or by township electors upon an initiative petition, and provides for injunctive relief or abatement of nuisance proceedings for any violation of a township resolution.
- Creates new expedited procedures upon appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state denying an application for, or suspending or revoking, a license or permit to locate or operate a sexually oriented business or adult entertainment establishment within the political subdivision.

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CONTENT AND OPERATION

PUBLIC INDECENCY LAW

Modification of Public Indecency Law

Existing law

Existing law prohibits any person from recklessly doing any of the following, *under circumstances in which his or her conduct is likely to be viewed by and affront others, not members of his or her household* (R.C. 2907.09(A)):

- (1) *Expose his or her private parts, or engage in masturbation;*
- (2) Engage in sexual conduct;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

A violation of any of the above prohibitions is public indecency, which generally is a misdemeanor of the fourth degree. If the offender once previously has been convicted of or pleaded guilty to public indecency, public indecency is a misdemeanor of the third degree. If the offender twice previously has been convicted of or pleaded guilty to public indecency, public indecency is a misdemeanor of the second degree. If the offender three or more times previously has been convicted of or pleaded guilty to public indecency, public indecency is a misdemeanor of the first degree. (R.C. 2907.09(B).)

Operation of the bill

The bill modifies the offense of "public indecency" by prohibiting any person from recklessly doing any of the following in a public place (instead of under circumstances in which his or her conduct is likely to be viewed by and affront others, not members of his or her household) (R.C. 2907.09(A)):

- (1) *Appear in a state of nudity* (instead of *expose his or her private parts*);
- (2) Engage in masturbation;
- (3) Engage in sexual conduct;
- (4) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

The bill provides that the prohibition in clause (1), above, does not apply to (a) any child under ten years of age, or (b) any individual exposing a breast in the process of breastfeeding an infant under two years of age (R.C. 2907.09(D)).

For purposes of the above prohibitions, the bill defines the following terms (R.C. 2907.09(C)):

"Public place" includes all of the following:

(1) All outdoor places, buildings, and enclosed places that are owned by the state or a political subdivision or that are open to the general public, including places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, and party rooms or halls;

(2) All outdoor places, buildings, and enclosed places that are limited to specific members or are restricted to adults or patrons invited to attend, whether or not an admission charge is levied, including places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, and party rooms or halls.

"Nudity" means any of the following:

(1) The showing of the human male or female genitalia, pubic hair, or buttocks with less than a fully opaque covering;

(2) The showing of the female breast with less than a fully opaque covering of any part of the nipple;

(3) The exposure of any device, costume, or covering that gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region, or pubic hair region;

(4) The exposure of any device worn as a cover over the nipples or areola of the female breast that simulates and gives the realistic appearance of nipples or areola. (See **COMMENT 1**.)

REGULATION OF ADULT ENTERTAINMENT ESTABLISHMENTS

Overview

The bill creates new R.C. Chapter 3768., which contains prohibitions, restrictions, penalties, civil remedies, and other regulations and definitions pertaining to adult entertainment establishments. It replaces the existing provisions in the Township Law pertaining to the regulation of adult cabarets and

adult-oriented businesses with the regulation of adult entertainment establishments.

Prohibitions and restrictions

Allowing underage persons to enter premises

The bill prohibits any person from knowingly allowing an individual under 21 years of age on the premises of an *adult entertainment establishment* (see "**Definitions**," below). Whoever violates this prohibition is guilty of a misdemeanor of the first degree. Each day a person violates the prohibition constitutes a separate offense. (R.C. 3768.02(A) and 3768.99(A).)

A person cannot be found guilty of a violation of the above prohibition if the person raises as an affirmative defense and if the jury or, in a nonjury trial, the court finds the person has established by a preponderance of the evidence, all of the following (R.C. 3768.02(C)):

(1) The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent, or independent contractor of the adult entertainment establishment a driver's or commercial driver's license or an identification card issued by the Registrar of Motor Vehicles or a deputy registrar under the Driver's License Law showing that the individual was then at least 21 years of age.

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

(3) The operator, employee, agent, or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least 21 years of age.

In any criminal action in which the above affirmative defense is raised, the Registrar of Motor Vehicles or the deputy registrar who issued a driver's or commercial driver's license or an identification card under the Driver's License Law must be permitted to submit certified copies of the records, in the Registrar's or deputy registrar's possession, of the issuance of the license or identification card in question, in lieu of the testimony of the personnel of the Bureau of Motor Vehicles in the action (R.C. 3768.02(D)).

Giving false information or identification

The bill prohibits any individual who is under 21 years of age from knowingly showing or giving false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment. Whoever violates this prohibition and is less than 18 years of age is a delinquent child and is subject to an order of disposition under the Juvenile Court Law (see **COMMENT 3**) that requires the child to pay a fine as described in that Law (see **COMMENT 4**). Whoever violates this prohibition and is 18 years of age or older is guilty of a misdemeanor of the fourth degree. (R.C. 3768.02(B) and 3768.99(B).)

Restricted operating hours

The bill prohibits any adult entertainment establishment from being open for business at any time before 10 a.m. or after 10 p.m., Monday through Saturday, or at any time on Sunday or a legal holiday (see **COMMENT 2**). This prohibition applies to adult entertainment establishments notwithstanding any conflicting provision in the Liquor Permit Law or any rule adopted under that Law by the Division of Liquor Control concerning the closing hours of establishments that hold a liquor permit. The bill provides that nothing in R.C. Chapter 3768. prohibits or is to be interpreted as prohibiting municipal corporations or townships from adopting ordinances or resolutions with more restrictive closing hours than those specified above, but those ordinances or resolutions otherwise may not conflict with the above restrictions. Whoever violates this prohibition is guilty of a misdemeanor of the first degree. Each day a person violates this prohibition constitutes a separate offense. (R.C. 3768.03(A) and (B) and 3768.99(A).)

Prohibitions regarding patrons

Under the bill, the following apply to an adult entertainment establishment that regularly features persons who appear in a state of nudity or semi-nudity or that regularly features live performances characterized by their emphasis upon the display or simulation of specified sexual activities (see "**Definitions**," below) (R.C. 3768.04(A)(1) and (2)):

(1) The bill prohibits any person, while *nude or semi-nude*, from knowingly doing any of the following:

(a) Appearing in the view of any patron, customer, or client unless the person remains at least six feet from the patron, customer, or client and on a stage at least two feet above the floor;

(b) Receiving any pay or gratuity directly from any patron, customer, or client;

(c) Touching any patron, customer, or client, or the clothing of any patron, customer, or client.

(2) The bill prohibits any person, while on the premises of that type of adult entertainment establishment, from doing any of the following:

(a) Giving any pay or gratuity directly to another person who is nude or semi-nude;

(b) Purposely touching any person while that person is nude or semi-nude, or touching the clothing or costume of any person while that person is nude or semi-nude.

Whoever violates this prohibition is guilty of a misdemeanor of the first degree. Each day a person violates any of those prohibitions constitutes a separate offense. (R.C. 3768.99(A).)

The bill provides that nothing in R.C. Chapter 3768. prohibits or is to be interpreted as prohibiting municipal corporations or townships from adopting ordinances or resolutions with more restrictive distancing requirements than those specified above, but those ordinances or resolutions otherwise may not conflict with the above prohibitions (R.C. 3768.04(B)).

Civil remedies

Injunctive relief by legal officers

The bill provides that if an alleged violation of any of the bill's adult entertainment establishment prohibitions has occurred or is occurring, the Attorney General, the prosecuting attorney of the county, the city director of law, village solicitor, or other similar chief legal officer of the municipal corporation, or the township law director must commence a civil action in the court of common pleas of the county in which the violation has occurred or is occurring for injunctive relief against the person who has violated or is violating the prohibition. The court of common pleas has jurisdiction to grant and must grant temporary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating the prohibition. (R.C. 3768.05(A).)

The bill provides that its adult entertainment establishment provisions do not affect legal or equitable causes of action or remedies, under common law or statute to abate nuisances or prevent the state or any municipal corporation,

township, or person from exercising equitable rights under common law or statute to abate nuisances (R.C. 3768.05(B)).

Injunctive relief by county resident

Permanent injunction. Any person who is a resident of the county in which a violation of any of the bill's adult entertainment establishment prohibitions has occurred or is occurring may commence a civil action for permanent injunctive relief in the court of common pleas of the county in which the violation has occurred or is occurring, in the name of the state upon the relation of the Attorney General, the city director of law, village solicitor, or other similar chief legal officer of the municipal corporation, the prosecuting attorney of the county, or the township law director, or in the name of the person, against the person who has violated or is violating the prohibition. The court of common pleas has jurisdiction to grant and must grant temporary or permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating the prohibition. (R.C. 3768.06(A).)

Bond. When a civil action for permanent injunctive relief is brought by a resident, the plaintiff must execute a bond in the sum of not less than \$500, to the defendant, with good and sufficient surety to be approved by the court, to secure to the defendant damages for harm the defendant may sustain and the reasonable attorney's fees the defendant may incur in defending the action: (1) if it is wrongfully brought, is not prosecuted to final judgment, is dismissed, or is not maintained, or (2) if it is finally decided that injunctive relief should not have been granted. If any of the above circumstances in clause (1) or (2) applies, the defendant has recourse against the bond for all damages for harm sustained, including harm to the defendant's property, person, or character, and for the reasonable attorney's fees incurred by the defendant, in defending the action. (R.C. 3768.06(B).)

Temporary injunction. After the filing of the complaint for permanent injunctive relief in a civil action by a resident, an application for a temporary injunction may be filed with the court. The proceedings for the issuance of that injunction are subject to the procedures described in the Nuisance Abatement Law for *ex parte* restraining orders (see **COMMENT 5**) pending the court's issuance or refusal to issue the temporary injunction and for the filing of a surety bond by the defendant for the described purposes. In deciding whether to grant the temporary injunction, the court cannot consider whether the person has exercised the person's rights pertaining to a void lease if a building is used for lewd purposes under the Nuisance Law (see **COMMENT 6**). (R.C. 3768.06(C)(1).)

Expedited hearing. A civil action filed by a county resident must be set down for trial at the earliest possible time and has precedence over all other cases,

except those involving crimes, election contests, or injunctions, regardless of the position of the action on the calendar of the court. In the civil action, evidence of the general reputation of the place where the violation is alleged to have occurred or to be occurring, or of a guilty plea to or finding of guilt of any person for having committed a violation of any of the above prohibitions at the place: (1) is admissible for the purpose of proving the existence of a violation of the bill's adult entertainment establishment provisions and (2) is prima-facie evidence of the violation and of knowledge of and acquiescence and participation in the violation on the part of the person charged with maintaining the violation. (R.C. 3768.06(C)(2)(a).)

The complaint for the permanent injunction must not be dismissed unless the plaintiff and the plaintiff's attorney submit a sworn statement setting forth the reasons why the civil action should be dismissed and the prosecuting attorney of the county approves the dismissal in writing or in open court. If the plaintiff refuses or otherwise fails to prosecute the complaint to judgment, and if the civil action is not dismissed, then, with the approval of the court, the Attorney General, prosecuting attorney, city director of law, village solicitor, similar chief municipal legal officer, or township law director may be substituted for the plaintiff and prosecute the civil action to judgment. (R.C. 3768.06(C)(2)(b).)

Judgment. If a violation of any of the bill's adult entertainment establishment prohibitions is established upon the trial of the civil action, a judgment must be entered that permanently enjoins the defendant and any other person from further violation at the place complained of and from violating any of the prohibitions at any other location within the jurisdiction of the court. If the court finds that a violation occurred or is occurring, in entering its judgment, the court must do all of the following (R.C. 3768.06(C)(4)):

- (1) Specify that judgment is entered as described above;
- (2) Award the plaintiff court costs and the reasonable attorney's fees incurred in prosecuting the action;
- (3) Send notice of the judgment entered to the Division of Liquor Control, the Liquor Control Commission, and the Liquor Enforcement Division of the Department of Public Safety.

If the court finds that there were no reasonable grounds or cause for a civil action by a county resident as described above, costs may be taxed to the plaintiff (R.C. 3768.06(C)(3)).

Nonpreemption of local regulations

The bill provides that nothing in its provisions regulating adult entertainment establishments preempts or prevents political subdivisions in Ohio from adopting or enforcing additional lawful and reasonable restrictions, licensing requirements, zoning or other regulations, or other civil or administrative provisions pertaining to the location, configuration, code compliance, or other aspects of the business operations of adult entertainment establishments (R.C. 3768.07).

Definitions

The bill defines the following terms for purposes of the regulation of adult entertainment establishments in R.C. Chapter 3768. as described above (R.C. 3768.01) and the regulation of adult entertainment establishments by townships as described below (new R.C. 503.51) (italicized terms are also defined):

(A) "Adult entertainment establishment" means an *adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or semi-nude model studio, or sexual encounter establishment* (see definitions in (B) to (H), below).

(B) "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.*

(C) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment that has as a significant or substantial portion of its stock-in-trade 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:

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

An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas, and still be categorized as an adult bookstore, adult novelty store, or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas.

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

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

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

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

(E) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are *regularly shown* for any form of consideration.

(F) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, *regularly features* persons who appear in a state of nudity or semi-nudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

(G) "Nude or semi-nude model studio" means any place where a person, who regularly appears in a state of nudity or semi-nudity, is provided for money or any other form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

A modeling class or studio is not a nude or semi-nude modeling studio and is not subject to the bill if it is operated in any of the following ways:

(1) By a college, junior college, or university supported entirely or partly by taxation;

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

(3) In a structure to which all of the following apply:

(a) It has no sign visible from the exterior of the structure and no other advertising indicating that a person appearing in a state of nudity or semi-nudity is available for viewing.

(b) In order to participate in a class in the structure, a student must enroll at least three days in advance of the class.

(c) No more than one nude or semi-nude model is on the premises at any one time.

(H) "Sexual encounter establishment" means a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where two or more persons may congregate, associate, or consort for the purpose of specified sexual activities or when one or more of the persons is nude or semi-nude. An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy is not a "sexual encounter establishment" or an "adult entertainment establishment."

(I)(1) "Nudity," "nude," or "state of nudity" means (a) the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering, (b) the showing of the female breasts with less than a fully opaque covering of any part of the nipple, (c) the exposure of any device, costume, or covering that gives the appearance of or simulates the male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage, (d) the exposure of any device worn as a cover over the nipples or areola of the female breast, which device simulates and gives the realistic appearance of nipples or areola, or (e) the showing of the covered male genitals in a discernibly turgid state.

(2) "Semi-nude" or "state of semi-nudity" means a state of dress in which opaque clothing covers no 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.

(J) "Distinguished or characterized by their emphasis upon" means the dominant or principal character and theme of the object described by this phrase. For instance, when the phrase refers to films "that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description of specified sexual activities or specified anatomical areas.

(K) "Regularly features" or "regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult entertainment establishment.

(L) "Specified sexual activity" means any of the following:

(1) The intentional fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

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

(3) Excretory functions as a part of or in connection with any of the activities described above in (E)(1) and (2).

Notwithstanding any other provision of the bill's provisions regulating adult entertainment establishments to the contrary, movies rated G, PG, PG-13, or R by the Motion Picture Association of America, or live theatrical performances with serious artistic, social, or political value, that depict or describe specified sexual activity, are exempt from the bill.

(M) "Specified anatomical areas" means any of the following:

(1) Human genitals in a state of sexual arousal;

(2) The appearance of the cleft of the buttocks, anus, male or female genitals, or nipple of the female breast;

(3) A state of dress that fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or nipple of the female breast.

Notwithstanding any other provision of the bill's provisions regulating adult entertainment establishments to the contrary, movies rated G, PG, PG-13, or R by the Motion Picture Association of America, or live theatrical performances with serious artistic, social, or political value, that depict or describe specified anatomical areas, are exempt from the bill.



Regulation by townships--operation of the bill

The bill outright repeals the regulation by township provisions of existing law as described below, except the provisions described in the following sentence, and replaces existing law with the following provisions. It modifies the existing provisions on township resolutions proposed by initiative petition and regulating certain adult-oriented businesses.

Resolution by board of township trustees

A board of township trustees, by resolution, may regulate the operation of *adult entertainment establishments* (see "**Definitions**," above). Those regulations may include, but are not limited to, anti-nudity restrictions, limitations on hours of operation, interior configuration requirements, provisions to prohibit touching or tipping, 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. If a township has established zoning pursuant to the Township Zoning Law, the board of township trustees, by resolution, may regulate the location of adult entertainment establishments within the township. (New R.C. 503.52(A).)

A board of township trustees that has adopted a resolution as described above may do any of the following (new R.C. 503.52(B) and (C)):

(1) Modify its administrative procedures, including its administrative zoning procedures, with regard to adult entertainment establishments as the board determines necessary to ensure that constitutional requirements are met.

(2) Provide for criminal and civil sanctions for adult entertainment establishments that violate regulations established by the township under the resolution.

Resolution by initiative petition

The bill provides that resolutions of the type as described above may be proposed by initiative petition by the electors of a township and adopted by election by these electors, under the same circumstances, in the same manner, and subject to the same penalties as provided in specified sections in the Municipal Corporation Law for ordinances and other measures of municipal corporations, insofar as those sections are applicable to townships, except as described below in paragraphs (1) to (4) in "**Regulation of adult-oriented businesses**" under "**Regulation by townships--existing law**" (R.C. 503.53(A), renumbered from R.C. 503.29).

A resolution proposed as described above may provide for the following (R.C. 503.53(B)):

- (1) Modification of the administrative procedures, including administrative zoning procedures, of the township as those procedures apply to adult entertainment establishments to ensure that constitutional requirements are met;
- (2) Criminal and civil sanctions for adult entertainment establishments that violate regulations established by the resolution.

Sanctions

When it appears that a resolution adopted by the board of township trustees or by initiative petition as described above is being violated, the legal counsel of the township in which the violation is taking place may commence a civil action to enjoin the violation. The legal counsel of a township may commence a civil action under the Nuisance Abatement Law to abate as a nuisance any place in the unincorporated area of the township at which a resolution is being or has been violated. All proceeds from the sale of personal property or contents seized pursuant to the action must 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 that Law, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the township. Any proceeds remaining after that initial application must be deposited into the township treasury and credited to the general fund. (New R.C. 503.52(D).)

Regulation by townships--existing law

Regulation of adult cabarets

Under the Adult Cabaret Law (existing R.C. 503.51 to 503.59--not in the bill), a board of township trustees, by resolution, may regulate and require the registration of *adult cabarets* (see "Existing definitions," below) within the unincorporated territory of the township. In accordance with that Law, for that purpose, the board, by a majority vote of all members, may adopt, amend, administer, and enforce regulations within the unincorporated territory of the township.

A board may adopt regulations and amendments only after public hearing at not fewer than two regular sessions of the board. The board must cause to be published in at least one newspaper of general circulation in the township notice of the public hearings, including the time, date, and place, once a week for two weeks immediately preceding the hearings. The board must make available proposed regulations or amendments to the public at the office of the board.

Regulations or amendments adopted by the board are effective 30 days after the date of adoption unless, within 30 days after the adoption of the regulations or amendments, the township clerk receives a petition, signed by a number of qualified electors residing in the unincorporated area of the township equal to not less than 10% of the total number of votes cast in that area for all candidates for the office of Governor at the most recent general election for that office, requesting the board to submit the regulations or amendments to the electors of the area for approval or rejection at the next primary or general election occurring at least 75 days after the board receives the petition.

No regulation or amendment for which the referendum vote has been requested is effective unless a majority of the votes cast on the issue is in favor of the regulation or amendment. Upon certification by the board of elections that a majority of the votes cast on the issue was in favor of the regulation or amendment, the regulation or amendment takes immediate effect.

The board must make available regulations it adopts or amends to the public at the office of the board and cause to be published a notice of the availability of the regulations in at least one newspaper of general circulation in the township within ten days after their adoption or amendment. (Existing R.C. 503.52--not in the bill.)

Prohibitions and penalties

The following prohibitions apply if a board of township trustees has adopted a resolution as described above (existing R.C. 503.53 and 503.99--not in the bill):

(1) A person is prohibited from engaging in, conducting or carrying on, or permitting to be engaged in, conducted or carried on in the unincorporated areas of the township, the operation of an adult cabaret without first having obtained a permit from the board of township trustees as described below.

Whoever violates this prohibition is guilty of a misdemeanor of the first degree for a first offense, and a felony of the fourth degree for a second offense.

(2) An owner or operator of an adult cabaret located in the unincorporated areas of the township is prohibited from knowingly doing any of the following:

(a) Refusing to allow appropriate state or local authorities, including police officers, access to the adult cabaret for any health or safety inspection, or any other inspection conducted to ensure compliance with the Adult Cabaret Law and regulations adopted by the township under that Law;

(b) Operating during the hours designated as prohibited hours of operation by the board of township trustees;

(c) Employing any person under the age of 18;

(d) Establishing or operating an adult cabaret within 500 feet from the boundaries of a parcel of real estate having situated on it a school, church, library, public playground, or township park.

(3) A person employed in an adult cabaret located in the unincorporated area of the township from knowingly doing any of the following in the performance of duties at the adult cabaret:

(a) Placing his or her hand upon, touching with any part of his or her body, fondling in any manner, or massaging the genitals, pubic area, or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female;

(b) Performing, offering, or agreeing to perform any act that would require the touching of the genitals, pubic area, or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female;

(c) Uncovering the genitals, pubic area, or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female.

Whoever violates a prohibition described in paragraph (2) or (3), above, is guilty of a misdemeanor of the third degree.

Application for and expiration of permit

If a board of township trustees has adopted a resolution as described above, the application for a permit to operate an adult cabaret must be made to the board and must include all of the following (existing R.C. 503.54--not in the bill):

(1) An initial, nonrefundable filing fee of \$250 and an annual nonrefundable renewal fee of \$125;

(2) A health and safety report of an inspection of the premises performed within 30 days of the application to determine compliance with applicable health and safety codes. Appropriate state or local authorities acting pursuant to an agreement with the board must perform this inspection.

(3) The full name and address of any person applying for a permit, including any partner or limited partner of a partnership applicant, any officer or director of a corporate applicant, and any stock holder holding more than 2% of

the stock of a corporate applicant, the date of birth and social security number of each individual, and the federal identification number of any partnership or corporation;

(4) Authorization for an investigation into the criminal record of any person applying for a permit;

(5) Any other information determined by the board to be necessary.

A permit issued to an adult cabaret expires one year after the date of issuance, except that no adult cabaret may be required to discontinue business because of the failure of the board to act on a renewal application filed in a timely manner and pending before the board on the expiration date of the establishment's permit. Each permit must contain the name of the applicant, the address of the adult cabaret, and the expiration date of the permit. (Existing R.C. 503.54--not in the bill.)

Permissible regulations

If a board of township trustees has adopted a resolution as described above, the regulations adopted for that purpose may require an adult cabaret to do any of the following (existing R.C. 503.56--not in the bill):

(1) Display its current permit in an area open to the public;

(2) Undergo periodic health and safety inspections to determine continual compliance with applicable health and safety codes;

(3) Be open for business only during specified hours;

(4) Comply with any other requirement reasonably thought necessary by the board.

Grounds for denial or revocation of permit

If a board of township trustees has adopted a resolution as described above, it must deny any application for a permit to operate an adult cabaret or revoke a previously issued permit, for any of the following reasons (existing R.C. 503.55--not in the bill):

(1) Any of the information required for the application has been falsified or the application has not been fully completed.

(2) There has been a failure to cooperate with any required health or safety inspection.

(3) Any one of the persons named on the application has been convicted of or pleaded guilty to any violation of the Sex Offenses Law, or any violation of any municipal ordinance or any law of another state that is substantially equivalent to any offense contained in that Law.

(4) Any person employed at the licensed adult cabaret has been convicted of or pleaded guilty to a violation of the prohibition described above in paragraph (3) under "**Prohibitions and penalties.**"

(5) The Liquor Control Commission has revoked a liquor permit held by any one of the persons named on the application.

Procedure for denial or revocation of permit

A board of township trustees acting under the Adult Cabaret Law need not hold any hearing in connection with an order denying or revoking a permit to operate an adult cabaret. The board must maintain a complete record of each proceeding and notify the applicant in writing of its order. Any person adversely affected by an order of the board denying or revoking a permit to operate an adult cabaret may appeal from the order of the board to the court of common pleas of the county in which the place of business of the applicant or permit holder is to be located or is located, as appropriate. The appeal must be in accordance with the Appeals from Orders of Political Subdivision Administrative Officers and Agencies Law. (Existing R.C. 503.57--not in the bill.)

Disposition of fees

If a board of township trustees has adopted a resolution as described above, the board must deposit the fees collected by the township for adult cabaret permits in the township general fund and first use the fees for the cost of administering and enforcing regulations adopted under the Adult Cabaret Law (existing R.C. 503.58--not in the bill).

Regulation of adult-oriented businesses

The board of township trustees of a township may adopt, amend, and rescind resolutions that regulate or restrict, within the unincorporated area of the township, *adult-oriented businesses* that sell, offer for sale, or distribute *material that is harmful to juveniles or obscene* (see "**Existing definitions,**" below) (existing R.C. 503.65(B)--not in the bill).

Resolutions of the type as described above may be proposed by initiative petition by the electors of a township and adopted by election by these electors, under the same circumstances, in the same manner, and subject to the same penalties as provided in specified sections in the Municipal Corporation Law for

ordinances and other measures of municipal corporations, insofar as those sections are applicable to townships, except as follows (R.C. 503.29):

(1) The board of township trustees must perform the duties imposed on the legislative authority of the municipal corporation under those sections.

(2) Initiative petitions must be filed with the township clerk, who must perform the duties imposed under those sections upon the city auditor or village clerk.

(3) Initiative petitions must contain the signatures of electors of the township equal in number to at least 10% of the total vote cast in the township for the office of Governor at the most recent general election for that office.

(4) Each signer of an initiative petition must be an elector of the township in which the election on the proposed resolution is to be held.

When it appears that a resolution adopted as described in the second preceding paragraph or adopted by initiative petition is being violated, the legal counsel of the township in which the violation is taking place may bring an action to enjoin the violation.

The legal counsel of a township may bring an action to abate as a nuisance under the Nuisance Abatement Law any place in the unincorporated area of the township at which a resolution adopted as described in the preceding paragraph has been violated. In bringing this action, the legal counsel must proceed in the same manner as if the legal counsel were the chief legal officer of a municipal corporation bringing an action to abate a nuisance under that Law. All proceeds from the sale of personal property or contents seized pursuant to a civil action brought under that Law must 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 that Law, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the complainant. Any proceeds remaining after that initial application must be deposited into the township treasury and credited to the general fund. (Existing R.C. 503.65(C)--not in the bill.)

Whoever violates a resolution adopted as described above is guilty of a misdemeanor of the first degree or, if the offender previously has been convicted of a violation of a resolution adopted as described above, a felony of the fifth degree (existing R.C. 503.99--not in the bill).

Existing definitions

For purposes of the above township regulations, existing law defines the following terms:

"Adult cabaret" means a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity in the performance of their duties.

"Nudity" means the showing of either of the following: (1) the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or (2) the female breast with less than a fully opaque covering on any part of the nipple. (Existing R.C. 503.51--not in the bill.)

"Adult-oriented business" means an establishment having as its primary stock and trade material that is distinguished or characterized by its emphasis on sexually oriented *material that is harmful to juveniles or obscene* (see **COMMENT 7**) (existing R.C. 503.65(A)--not in the bill).

EXPEDITED APPEAL PROCEDURES

Existing law

Existing R.C. Chapter 2506. governs appeals from final orders, adjudications, or decisions of political subdivision administrative officers and agencies. Under that law, every *final order, adjudication, or decision* (defined in this paragraph) of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in R.C. Chapter 2505. (General Appeals Law), *except as modified by R.C. Chapter 2506.* (Appeals from Orders of Political Subdivision Administrative Officers and Agencies). The appeal provided in *R.C. Chapter 2506.* is in addition to any other remedy of appeal provided by law. A "final order, adjudication, or decision" means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding. (R.C. 2506.01.)

Transcript

Within 40 days after filing the notice of appeal, the officer or body from which the appeal is taken, upon the filing of a praecipe, must prepare and file in the court to which the appeal is taken, a complete transcript of all the original

papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. (R.C. 2506.02.)

Under the General Appeals Law, in the case of an administrative-related appeal, within 40 days after the filing of a notice of appeal or the obtaining of a leave to appeal, the administrative instrumentality whose final order is being appealed must prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order. (R.C. 2505.08.)

Hearing

The hearing of the appeal described under "**Existing law**," above, proceeds as in the trial of a civil action, but the court must be confined to the transcript as filed unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies (R.C. 2506.03):

(1) The transcript does not contain a report of all evidence admitted or proffered by the appellant.

(2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision appealed from, and to present the appellant's position, arguments, and contentions; offer and examine witnesses and present evidence in support; cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions; offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions; or proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.

(3) The testimony adduced was not given under oath.

(4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from or the refusal, after request, of such officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.

(5) The officer or body failed to file with the transcript, conclusions of fact supporting the final order, adjudication, or decision appealed from.

If any circumstance described above in (1) to (5) applies, the court must hear the appeal upon the transcript and any additional evidence that may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party. (R.C. 2506.03.)

Findings

The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, the General Appeals Law. (R.C. 2506.04.)

Operation of the bill

The bill creates new expedited procedures upon appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state denying an application for, or suspending or revoking, a license or permit to locate or operate a sexually oriented business or adult entertainment establishment within that political subdivision. It limits the application of existing law as described above to appeals of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state or to administrative-related appeals, as the case may be, *other than* expedited appeals described in the preceding sentence. (R.C. 2505.08, 2506.01(A), 2506.02, 2506.03(A), and 2506.04.)

Appeal of license or permit decision

The bill provides that except as modified by the bill, every final order, adjudication, or decision (the bill applies existing law's definition of "final order, adjudication, or decision," as described above in the first paragraph under "**Existing law**," to the new procedures in the bill) of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state denying an application for, or suspending or revoking, a license or permit to locate or operate a sexually oriented business or adult entertainment establishment within that political subdivision may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in the General Appeals Law.

A court of common pleas may hear appeals under the bill in cases in which the court determines that there is a threat of restraint of expression protected or presumptively protected under the First Amendment to the United States Constitution or under Section 11 of Article I, Ohio Constitution (see **COMMENT**

8). The appeal as described above is in addition to any other remedy of appeal provided by law. (R.C. 2506.05(A) and (D).)

Expedited appeal and hearing

An appellant seeking to have an appeal heard under the bill must designate it as an expedited appeal by inserting the words "Expedited Appeal Requested" in conspicuous typeface in the caption of the notice of appeal. The court must conduct a hearing within 15 days after the date of the filing of the notice of appeal. The court must render a decision within 20 days after the conclusion of the hearing. (R.C. 2506.05(B) and (C).)

Filing of transcript

Within ten days after filing a notice of appeal as described above, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, must prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. The costs of the transcript are taxed as a part of the costs of the appeal. (R.C. 2506.06.)

Hearing of appeal

The hearing of an appeal taken under the bill must proceed as in the trial of a civil action, but the court must be confined to the transcript as filed unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the circumstances described above in paragraphs (1) to (5) under "**Hearing**" in "**Existing law**" applies (R.C. 2506.07(A)).

If any circumstance described in those paragraphs (1) to (5) applies, the court must hear the appeal upon the transcript and additional evidence as may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party. (R.C. 2506.07(B).)

Court findings

If an appeal is taken under the bill, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the

court. If the order, adjudication, or decision is remanded to the officer or body appealed from with those instructions, the officer or body must enter the consistent order, adjudication, or decision within five days after that remand. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, the General Appeals Law. (R.C. 2506.08.)

COMMENT

1. R.C. 2907.01(H) (not in the bill) provides that as used in R.C. 2907.01 to 2907.37 (Sex Offenses Law), "nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

2. R.C. 1.14, not in the bill defines "legal holiday" as: (a) the first day of January, known as New Year's day, (b) the third Monday in January, known as Martin Luther King day, (c) the third Monday in February, known as Washington-Lincoln day, (d) the day designated in the "Act of June 28, 1968," 5 U.S.C. 6103, as amended, for the commemoration of Memorial day, (e) the fourth day of July, known as Independence day, (f) the first Monday in September, known as Labor day, (g) the second Monday in October, known as Columbus day, (h) the 11th day of November, known as Veterans' day, (i) the fourth Thursday in November, known as Thanksgiving day, (j) the 25th day of December, known as Christmas day, and (k) any day appointed and recommended by the Governor of Ohio or the President of the United States as a holiday. If any day designated as a legal holiday falls on Sunday, the next succeeding day is a legal holiday.

3. The citation to R.C. 2151.355(A)(8) in the bill needs to be amended since R.C. 2151.355 has been repealed by Sub. S.B. 179 of the 123rd General Assembly, effective January 1, 2002. The orders of disposition of children adjudicated as delinquent children under the Juvenile Court Law are currently found in R.C. Chapter 2152.

4. The citation to R.C. 2151.3512(B) in the bill needs to be amended since R.C. 2151.3512 has been repealed by Sub. S.B. 179 of the 123rd General Assembly, effective January 1, 2002. The fines and other financial sanctions imposed upon children adjudicated as delinquent children under the Juvenile Court Law are currently found in R.C. 2152.20.

5. R.C. 3767.04(B)(2) and (C), not in the bill, provide as follows:

(2) If an application for a temporary injunction is filed, the court or a judge of the court, on application of the complainant, may issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the nuisance is alleged to exist until the decision of the court or judge granting or refusing the requested temporary injunction and until the further order of the court. The restraining order may be served by handing it to and leaving a copy of it with any person who is in charge of the place where the nuisance is alleged to exist or who resides in that place, by posting a copy of it in a conspicuous place at or upon one or more of the principal doors or entrances to that place, or by both delivery and posting. The officer serving the restraining order forthwith shall make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining the nuisance. Any violation of the restraining order is a contempt of court, and, if the order is posted, its mutilation or removal while it remains in force is a contempt of court, provided the posted order contains a notice to that effect.

. . .

(C) The owner of any real or personal property closed or restrained or to be closed or restrained may appear in the court of common pleas between the time of the filing of the complaint for the permanent injunction described in division (A) of this section and the hearing on the complaint, and, if all costs incurred are paid and if the owner of the real property files a bond with sureties approved by the clerk, in the full value of the real property as ascertained by the court or, in vacation, by the judge, and conditioned that the owner of the real property immediately will abate the nuisance and prevent it from being established or kept until the decision of the court or judge is rendered on the complaint for the permanent injunction, the court or judge in vacation, if satisfied of the good faith of the owner of the real property and of innocence on the part

of any owner of the personal property of any knowledge of the use of the personal property as a nuisance and that, with reasonable care and diligence, the owner of the personal property could not have known of its use as a nuisance, shall deliver the real or personal property, or both, to the respective owners and discharge or refrain from issuing at the time of the hearing on the application for the temporary injunction any order closing the real property or restraining the removal or interference with the personal property. The release of any real or personal property under this division shall not release it from any judgment, lien, penalty, or liability to which it may be subjected.

6. Under R.C. 3767.10, not in the bill, if a tenant or occupant of a building or tenement, under a lawful title, uses that place for the purposes of lewdness, assignation, or prostitution, the use makes void the lease or other title under which the tenant or occupant holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in the owner, who may without process of law make immediate entry upon the premises.

7. R.C. 2907.01(E), not in the bill, provides that any material or performance is "harmful to juveniles," if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following apply:

(1) It tends to appeal to the prurient interest of juveniles;

(2) It contains a display, description, or representation of sexual activity, masturbation, sexual excitement, or nudity;

(3) It contains a display, description, or representation of bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) It contains a display, description, or representation of human bodily functions of elimination;

(5) It makes repeated use of foul language;

(6) It contains a display, description, or representation in lurid detail of the violent physical torture, dismemberment, destruction, or death of a human being;

(7) It contains a display, description, or representation of criminal activity that tends to glorify or glamorize the activity, and that, with respect to juveniles, has a dominant tendency to corrupt.

R.C. 2907.01(F), not in the bill, provides that when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine

scientific, educational, sociological, moral, or artistic purpose.

8. The First Amendment to the United States Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 11 of Article I, Ohio Constitution, provides as follows:

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

HISTORY

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