



H.B. 385

125th General Assembly
(As Introduced)

Reps. Distel, Wagner, Cirelli, G. Smith, S. Smith, Wolpert, Beatty, Hollister, Perry, Jerse, Olman, Book, DeGeeter, Schmidt, Collier, Key, Ujvagi, Williams, Gibbs, Harwood, Reidelbach, Webster, Seaver, Price, Allen, Barrett, Strahorn, Hartnett

BILL SUMMARY

- Prohibits the display within one mile of a school building of certain devices advertising a sexually oriented business.

CONTENT AND OPERATION

Displays advertising a sexually oriented business

Prohibition

The bill prohibits anyone with custody, control, or supervision of certain commercial establishments from advertising the establishment through use of an "advertising device" within one mile of a school building.¹ "Advertising device" generally includes any sign or billboard used to advertise outdoors.²

¹ "School building" means "any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed" (R.C. 2925.01, not in the bill).

² The bill defines "advertising device" as including "any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other contrivance designed, intended, or used to advertise or to give information in the nature of advertising, or any part of an outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or contrivance of that nature" (R.C. 2907.312(A)(1)).

The prohibition applies to commercial establishments to which any of the following apply:

- (1) Material that is harmful to juveniles is present;³
- (2) A performance that is harmful to juveniles occurs;
- (3) Nudity-oriented or sexually oriented material is present;
- (4) A nudity-oriented or sexually oriented performance occurs.

(R.C. 2907.312(A) and (B).)

Penalty

A person who violates the prohibition is guilty of "displaying a sign that advertises a sexually oriented business," a first degree misdemeanor (R.C. 2907.312(C)). A first degree misdemeanor is generally punishable by not more than 180 days in jail or a fine of up to \$1,000 (R.C. 2929.24, not in the bill). The new offense applies only to violations of the prohibition that occur on or after the bill's effective date (R.C. 2907.312(D)).

COMMENT

1. The offense created by the bill does not specify a culpable mental state. Section 2901.21(B) of the Revised Code provides that when the section defining an offense neither specifies culpability nor plainly indicates an intention to impose strict liability, "recklessness is sufficient culpability to commit the offense."

³ "Harmful to juveniles" means "that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply: (1) the material or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles, (2) the material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles, and (3) the material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles" (R.C. 2907.01(E), not in the bill).

"Material" means "any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device" (R.C. 2907.01(J), not in the bill).

2. There are three constitutional issues raised by the bill's prohibition:

(a) Whether the prohibition would restrict a person's commercial speech in a manner that might violate the "freedom of speech" provisions of the First Amendment to the U.S. Constitution and Article I, Section 11 of the Ohio Constitution;

(b) Whether the prohibition would "single out" a specific category of signs and prohibit their display, while not prohibiting similar displays of other categories of signs, in a manner that might be denying the "equal protection of the law" of the persons in control of the prohibited signs that is guaranteed under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2 of the Ohio Constitution; and

(c) Whether the prohibition, as applied in certain circumstances, would violate the due process clause of the U.S. Constitution because it is overly broad and prohibits otherwise legal activity. For example, a grocery store might sell a magazine that is harmful to juveniles, sell the magazine in a manner that does not violate any law, and advertise groceries on a sign within one mile of a school building. The bill would prohibit such activity, but the commercial establishment would not be violating any other law. It is not clear how a court would view the application of the bill to this set of facts.

HISTORY

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