



S.B. 27

126th General Assembly
(As Introduced)

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BILL SUMMARY

- Prohibits persons having custody, control, or supervision of commercial establishments from knowingly permitting the use of, or offering the use of, viewing booths, stalls, or partitioned parts of rooms for the purpose of viewing visual materials or performances depicting sexual conduct unless certain requirements pertaining to the booths', stalls', or partitioned rooms' physical characteristics are met, and designates the offense as permitting unlawful operation of viewing booths depicting sexual conduct.
- Creates new R.C. Chapter 3768. that contains prohibitions, restrictions, penalties, civil and administrative remedies, other regulations, and definitions pertaining to adult entertainment establishments.
- Prohibits a person from knowingly allowing a minor on the premises of an adult entertainment establishment, and prohibits a minor from knowingly giving or showing false information or identification for the purpose of gaining entrance to an adult entertainment establishment.
- Generally restricts the hours of operation of adult entertainment establishments.
- Specifies prohibitions concerning a nude or seminude 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 those adult entertainment establishments generally giving any pay or gratuity directly to or purposely touching a nude or seminude person or the person's clothing.

- Authorizes 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.
- Specifies that premises used or occupied for repeated violations of the bill's prohibitions constitute a nuisance subject to abatement.
- Provides that the provisions regulating adult entertainment establishments do not preempt or prevent political subdivisions from adopting additional regulations that do not conflict with the Liquor Permit Law or any rule adopted pursuant to that Law that regulates establishments holding a liquor permit.
- Replaces the existing provisions in the Township Law pertaining to the regulation of adult cabarets and adult-oriented businesses with provisions authorizing the regulation of adult entertainment establishments.
- Provides that township regulation of adult entertainment establishments, which may include licensing or permit requirements and criminal and civil sanctions for violation of the regulations, 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.
- Specifically permits a county or a township that regulates adult entertainment establishments to modify zoning procedures to ensure that they comply with constitutional requirements.
- Creates new expedited procedures for certain appeals of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision denying an application for, or suspending or revoking, a license or permit to locate or operate an adult entertainment establishment.
- Specifies the General Assembly's findings and intent in regard to the enactment of the new Regulation of Adult Entertainment Establishments Law.

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CONTENT AND OPERATION

Permitting unlawful operation of viewing booths depicting sexual conduct

In general

The bill creates the offense of permitting unlawful operation of viewing booths depicting sexual conduct.

Prohibition

The bill prohibits any person who has custody, control, or supervision of a *commercial establishment*, with knowledge of the character of the *visual material or performance* involved, from knowingly permitting the use of, or offering the use of, viewing booths, stalls, or partitioned portions of a room located in the



commercial establishment for the purpose of viewing visual materials or performances depicting *sexual conduct* unless both of the following apply (see "**Definitions**," below) (R.C. 2907.38(B)):

(1) The inside of each booth, stall, or partitioned room is visible from, and at least one side of each booth, stall, or partitioned room is open to, a continuous and contiguous main aisle or hallway that is open to the public areas of the commercial establishment and is not obscured by any curtain, door, or other covering or enclosure.

(2) No booth, stall, or partitioned room is designed, constructed, pandered, or allowed to be used for the purpose of encouraging or facilitating *nudity* or *sexual activity* (see "**Definitions**," below) on the part of or between patrons or members of the public, and no booth, stall, or partitioned room has any aperture, hole, or opening for the purpose of encouraging or facilitating nudity or sexual activity.

Whoever violates this prohibition is guilty of permitting unlawful operation of viewing booths depicting sexual conduct, a misdemeanor of the first degree (R.C. 2907.38(D)).

Affirmative defense

The bill provides that it is an affirmative defense to a charge of permitting unlawful operation of viewing booths depicting sexual conduct that either of the following applies to the involved visual materials or performances (R.C. 2907.38(C)):

(1) The visual materials or performances depicting sexual conduct are disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose and by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the visual materials or performances.

(2) The visual materials or performances depicting sexual conduct, taken as a whole, would be found by a reasonable person to have serious literary, artistic, political, or scientific value or are presented or disseminated in good faith for a serious literary, artistic, political, or scientific purpose and are not pandered for their prurient appeal.

Definitions

The bill defines the following terms for purposes of its provisions described above (R.C. 2907.38(A)):

- "Commercial establishment" means an entity that is open to the public and to which either of the following applies: (1) it has a substantial or significant portion of its stock in trade of the sale, rental, or viewing of visual materials or performances depicting sexual conduct, or (2) it has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct.
- "Visual materials or performances" means films, videos, CD-ROM discs, streaming video, or other motion pictures.

The following definitions in the existing Sex Offenses Law also apply to the bill's provisions (R.C. 2907.01(A), (B), (C), and (H)):

- "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another.
- "Sexual activity" means sexual conduct or *sexual contact* (defined as any touching of an erogenous zone of another, including the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person), or both.
- "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 of the breast below the top of the nipple, or of covered male genitals in a discernibly turgid state.

Regulation of adult entertainment establishments

Overview

The bill creates new R.C. Chapter 3768., which contains prohibitions, restrictions, penalties, civil and administrative remedies, other regulations, and definitions pertaining to adult entertainment establishments. And, it replaces the existing provisions in the Township Law pertaining to the regulation of adult cabarets and adult-oriented businesses with provisions authorizing 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, including, but not limited, to a

patron, customer, or employee, who is under 18 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, and each day of violation constitutes a separate offense. (R.C. 3768.02(A) and 3768.99(A).)

A person cannot be found guilty of a violation of the 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)):

- The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent, or independent contractor of the establishment a driver's or commercial driver's license or an identification card issued by the Registrar of Motor Vehicles or a deputy registrar showing that the individual was then at least 18 years of age.
- 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.
- The operator, employee, agent, or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least 18 years of age.

In any criminal action in which this 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 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 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 18 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 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 11 p.m., except that an establishment that holds a liquor permit may remain open

under the terms of the permit but may not conduct adult entertainment during the hours of operation granted by the permit that are before 10 a.m. or after 11 p.m. unless performers appear in a state of seminudity and not in a state of nudity. Whoever violates this prohibition is guilty of a misdemeanor of the first degree, and each day of violation constitutes a separate offense. (R.C. 3768.03 and 3768.99(A).)

Prohibitions regarding performers and patrons. Under the bill, the following requirements (prohibitions) apply to an adult entertainment establishment that regularly features persons who appear in a state of nudity or seminudity 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) to (C)):

(1) No person, while *nude* or *seminude*, may knowingly do any of the following: (a) appear 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) receive any pay or gratuity directly from any patron, customer, or client, or (c) touch any patron, customer, or client, or the clothing of any patron, customer, or client.

(2) No person, while on the premises of that type of adult entertainment establishment, may knowingly do any of the following: (a) give any pay or gratuity directly to another person who is nude or seminude, or (b) touch any person, or touch the clothing or costume of any person, while that person is nude or seminude.

(3) No owner, manager, agent or designee of an owner or manager, or employee of that type of adult entertainment establishment may knowingly permit any person, regardless of whether the person was hired or engaged as an employee or independent contractor, to violate prohibition (1) or (2), above.

Whoever violates any of these prohibitions is guilty of a misdemeanor of the first degree, and each day of violation constitutes a separate offense (R.C. 3768.99(A)). Nothing in the prohibitions, however, prohibits a patron, customer, or client from indirectly giving any pay or gratuity to another person who is nude or seminude, such as placing the pay or gratuity in a tip jar (R.C. 3768.04(D)).

Civil and administrative remedies

Injunctive relief by legal officers and nuisance abatement. The bill provides that if an alleged violation of any of its 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 may 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 has jurisdiction to 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).)

Premises used or occupied for *repeated* violations of the bill's adult entertainment establishment provisions constitute a nuisance subject to abatement under the Nuisance Law (R.C. 3768.05(B)). In addition, legal or equitable causes of action or remedies, under common law or statute, to abate nuisances are available with respect to adult entertainment establishments, and the state or any municipal corporation, township, or person may exercise equitable rights under common law or statute to abate such nuisances (R.C. 3768.05(C)).

Nonpreemption of local regulations. The bill's provisions regulating adult entertainment establishments do not preempt or prevent political subdivisions 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 except that those regulations must not conflict with any provision in the Liquor Permit Law, or with any rule adopted by the Division of Liquor Control pursuant to that Law, that regulates establishments that hold a liquor permit (R.C. 3768.06).

Suspension or revocation of liquor permit. The bill authorizes the Liquor Control Commission to suspend or revoke any permit issued under the Liquor Control Law or the Liquor Permit Law if the permit holder or the holder's agent or employee is convicted of a violation of any of the bill's previously discussed prohibitions with the exception of giving false information or identification (R.C. 4301.25(A)(1)).

Definitions

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

- "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 seminude model studio, or sexual encounter establishment*. An establishment in which a medical

practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated by law, is not an "adult entertainment establishment." (R.C. 3768.01(E).)

- "Adult entertainment" means the sale, rental, or exhibition, for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances that are *characterized by an emphasis* on the exposure or display of *specified anatomical areas* or specified sexual activity (R.C. 3768.01(D)).
- "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 (R.C. 3768.01(A)).
- "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment that, for any form of consideration, 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 of any of the following: (a) 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, or (b) 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 as 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. (R.C. 3768.01(B).)

- "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: (a) persons who appear in a state of nudity or seminudity, (b) live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities, or (c) 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. (R.C. 3768.01(C).)
- "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 (R.C. 3768.01(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 seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities (R.C. 3768.01(G)).
- "Nude or seminude model studio" means any place where a person, who regularly appears in a state of nudity or seminudity, 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 seminude model studio and is not subject to the bill if it is operated in any of the following ways: (a) by a college or university supported entirely or partly by taxation, (b) by a private college or university that maintains and operates educational programs, the credits for which are transferable to a college or university supported entirely or partly by taxation, or (c) in a structure to which all of the following apply--(i) 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 seminudity is available for viewing, (ii) in order to participate in a class in the structure, a student must enroll at least three days in advance of

the class, and (iii) no more than one nude or seminude model is on the premises at any one time. (R.C. 3768.01(I).)

- "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 (a) two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities, or (b) two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form. An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated by law, is not a sexual encounter establishment. (R.C. 3768.01(M).)
- "Nudity," "nude," or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering, or the showing of female breasts with less than a fully opaque covering of any part of the nipple (R.C. 3768.01(J)).
- "Seminude" or "state of seminudity" means a state of dress in which opaque clothing covers not more than the genitals, pubic region, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices (R.C. 3768.01(L)).
- "Distinguished or characterized by their emphasis upon" means the dominant or principal character and theme of the object described by this phrase. When the phrase, for example, 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. (R.C. 3768.01(H).)
- "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 (R.C. 3768.01(K)).
- "Specified sexual activity" means (a) sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation,

or sodomy, or (b) excretory functions as a part of or in connection with any of the activities described in item (a). (R.C. 3768.01(O).)

- "Specified anatomical areas" means the cleft of the buttocks, anus, male or female genitals, or the female breast (R.C. 3768.01(N)).

Regulation by townships

In general. The bill generally outright repeals the existing provisions of law pertaining to the regulation of adult cabarets and adult-oriented businesses by townships, and replaces them with the new law described below. The bill also modifies the existing law pertaining to township resolutions proposed by initiative petition to regulate adult-oriented businesses. (Section 503.53 and Section 2 of the bill.) (See **COMMENT** 1, 2, and 3 for a discussion of existing law.)

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, antinudity restrictions, limitations on hours of operation, interior configuration requirements, and requirements that the establishments and their employees obtain licenses or permits to operate as or to be employed by an adult entertainment establishment. Those regulations must not conflict with the Liquor Permit Law, or with any rule adopted by the Division of Liquor Control pursuant to that Law, that regulate establishments that hold a liquor permit. (New R.C. 503.52(A).)

The board of township trustees may provide criminal and civil sanctions for adult entertainment establishments that violate the regulations. All proceeds from those sanctions must be applied initially to the payment of costs incurred in the prosecution and enforcement of the resolution, including, but not limited to, court costs, reasonable attorney's fees, and other litigation expenses incurred by the county or township. (R.C. 503.52(B).)

Resolution by initiative petition. The bill provides that a resolution regulating adult entertainment establishments also may be proposed by initiative petition by the electors of a township and adopted by the electors, generally under the same circumstances, in the same manner, and subject to the same penalties as provided in specified sections of the Municipal Corporation Law for ordinances and other measures of municipal corporations (R.C. 503.53(A), renumbered from R.C. 503.29). A resolution proposed by initiative petition may provide for the following (R.C. 503.53(B)):

- 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;

- 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 is being or is about to be violated, the legal counsel of the township may commence a civil action to enjoin the violation. The legal counsel also may commence a civil action under the Nuisance Law to abate as a nuisance any place in the unincorporated area of the township at which the resolution is being or has been violated. All proceeds from the sale of personal property or contents seized pursuant to a nuisance 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 county or 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(C).)

Zoning procedures

The bill provides that a board of county commissioners or a board of township trustees that regulates adult entertainment establishments pursuant to its zoning authority may modify the administrative zoning procedures with regard to adult entertainment establishments as the board determines necessary to ensure that the procedures comply with all applicable constitutional requirements (R.C. 303.02(B) and 519.02(B)).

Expedited appeal procedures

Existing law

In general. 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* of any officer, tribunal, authority, board, bureau, commission, department, or other division of any 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, *except as modified by R.C. Chapter 2506.* 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 that 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 the filing of a notice of appeal under R.C. Chapter 2506., 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. A R.C. Chapter 2506. hearing proceeds as in the trial of a civil action, but the court is 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 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 in a R.C. Chapter 2506. appeal 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.)

Changes proposed by the bill

In general. The bill creates new expedited procedures for certain appeals of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision denying an application for, or suspending or revoking, a license or permit to locate or operate an adult entertainment establishment, as defined by the bill or as similarly defined by a political subdivision. It limits the application of existing law to appeals of a final order, adjudication, or decision that does not involve the denial, suspension, or revocation of a license or permit subject to the new expedited procedures. (R.C. 2505.08, 2506.01(A), 2506.02, 2506.03(A), and 2506.04.)

Appeal of license or permit decision--options. The bill provides that, except as modified by it, every final order, adjudication, or decision (as defined by existing law) denying an application for, or suspending or revoking, a license or permit to locate or operate an adult entertainment establishment, as defined in the bill or as similarly defined by a 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. In addition to appeals brought in that manner, a court of common pleas may hear appeals under the bill's expedited procedures discussed below 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 of the Ohio Constitution (see

COMMENT 5). An appeal under either of these provisions of law 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. If the political subdivision does not object to the expedited appeal within three days of the filing of the notice of appeal or if, over the objection of the political subdivision, 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 of the Ohio Constitution, 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. If the court denies the request for an expedited appeal, the appeal must be heard in accordance with existing law's procedures described above. (R.C. 2506.05(B) and (C).)

Filing of transcript. Within five days after the filing of a notice of appeal for an expedited appeal, 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 to be taxed as part of the costs of the appeal. (R.C. 2506.06.)

Hearing of expedited appeal. The hearing of an expedited appeal must proceed as in the trial of a civil action, but the court is 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 in paragraphs (1) to (5) under "Hearing" in "Existing law," above applies (R.C. 2506.07(A)). If any circumstance described in those paragraphs 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 expedited appeal is taken, 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.)

Miscellaneous

The bill sets forth in uncodified law detailed legislative intent and findings provisions relative to the proposed Regulation of Adult Entertainment Establishments Law (Section 3 of the bill).

COMMENT

1. Regulation of adult cabarets under current Township Law

Resolution

Under the Adult Cabaret Law (outright repealed by the bill), a board of township trustees, by resolution, may regulate and require the registration of *adult cabarets* within the unincorporated territory of the township. The board, by a majority vote of all members, may adopt, amend, administer, and enforce the regulations within the unincorporated territory. (R.C. 503.52(A).)

The board may adopt the regulations or amendments to them 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 their 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 its office. (R.C. 503.52(B).)

Regulations or amendments adopted by the board are effective 30 days after the date of adoption unless, within the 30-day period, the township clerk receives a petition, signed by qualified electors residing in the unincorporated area of the township equal in number 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 a 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, it takes immediate effect. (R.C. 503.52(C).)



The board must make available to the public at the office of the board regulations it adopts or amends and cause to be published a notice of their availability in at least one newspaper of general circulation in the township within ten days after their adoption or amendment (R.C. 503.52(D)).

Prohibitions and penalties

The following prohibitions apply if a board of township trustees adopts a resolution to regulate adult cabarets (R.C. 503.53 and 503.59):

(a) 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.

(b) 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:

- 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;
- Operating during the hours designated as prohibited hours of operation by the board of township trustees;
- Employing any person under the age of 18;
- 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.

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

- 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;
- 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;

- 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 prohibition (b) or (c) above is guilty of a misdemeanor of the third degree.

Application for and expiration of permit

If a board of township trustees adopts a resolution to regulate adult cabarets, the application for a permit to operate an adult cabaret must be made to the board and include all of the following (R.C. 503.54):

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

(b) 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.

(c) 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;

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

(e) 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. (R.C. 503.54.)

Permissible regulations

If a board of township trustees adopts a resolution to regulate adult cabarets, the regulations may require an adult cabaret to display its current permit in an area open to the public, undergo periodic health and safety inspections to determine continual compliance with applicable health and safety codes, be open for business only during specified hours, and comply with any other requirement reasonably thought necessary by the board (R.C. 503.56).

Grounds for denial or revocation of permit

If a board of township trustees adopts a resolution to regulate adult cabarets, 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 (R.C. 503.55):

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

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

(c) 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.

(d) Any person employed at the licensed adult cabaret has been convicted of or pleaded guilty to a specified violation of the Adult Cabaret Law.

(e) 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 need not hold a hearing in connection with an order denying or revoking a permit to operate an adult cabaret. But, 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 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. (R.C. 503.57.)

Disposition of fees

A board of township trustees 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 (R.C. 503.58).

2. Regulation of adult-oriented businesses under current Township Law

A board of township trustees 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* (R.C. 503.65(B))--outright repealed by the bill).

Resolutions regulating adult-oriented businesses also may be proposed by initiative petition by the electors of a township and adopted by the electors, under the same circumstances, in the same manner, and subject to the same penalties as provided in specified sections of 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):

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

(b) 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.

(c) 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.

(d) 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 by the board or by initiative petition is being violated, the legal counsel of the township may bring an action to enjoin the violation. The legal counsel also may bring an action under the Nuisance Law to abate as a nuisance any place in the unincorporated area of the township at which the resolution 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 an action 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. (R.C. 503.65(C)--outright repealed by the bill.)

Whoever violates a resolution regulating adult-oriented businesses is guilty of a misdemeanor of the first degree or, if the offender previously has been convicted of a violation of a resolution, a felony of the fifth degree (R.C. 503.99--outright repealed by the bill).

3. For purposes of township regulations pertaining to adult cabarets or adult-oriented businesses, existing law defines the following terms (R.C. 503.51 and 503.65(A)--outright repealed by the bill):

- "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: the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the female breast with less than a fully opaque covering on any part of the nipple.
- "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 4**).

4. R.C. 2907.01(E) defines "harmful to juveniles" as 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:

- The material or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles.
- 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.



- The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

5. 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 of the 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

ACTION	DATE	JOURNAL ENTRY
Introduced	01-26-05	pp. 109-110

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