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H. B. No. 249

Representatives King, Williams

Cosponsors: Representatives Hoops, Deeter, Workman, Barhorst, Bird, Claggett, Click, Creech, Thomas, D., Demetriou, Ferguson, Fowler Arthur, Gross, Hall, T., Hiner, Holmes, Thomas, J., John, Miller, K., Ritter, Klopfenstein, Lear, Dean, Lorenz, Johnson, Mathews, T., McClain, Miller, M., Mullins, Newman, Peterson, Pizzulli, Plummer, Richardson, Robb Blasdel, Salvo, Swearingen, Willis, Lampton, Jones, Schmidt, Fischer, Mathews, A., Stewart, Abrams, Craig, Daniels, Dovilla, Ghanbari, Kishman, Roemer, Santucci, Stephens, Young

To amend sections 2907.09, 2907.39, and 4301.25 of
the Revised Code to enact the Indecent Exposure
Modernization Act.

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

Section 1. That sections 2907.09, 2907.39, and 4301.25 of
the Revised Code be amended to read as follows:

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Sec. 2907.09. (A) No person shall recklessly do any of the
following, under circumstances in which the person's conduct is
likely to be viewed by and affront others who are in the
person's physical proximity and who are not members of the
person's household:

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(1) Expose the person's private ~~parts~~area, as defined in
section 2907.01 of the Revised Code, unless the person is a
woman who is breastfeeding and the private area that is exposed
is the woman's breast;

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(2) Engage in sexual conduct or masturbation;

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(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation. 16
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(B) No person shall knowingly do any of the following, 18
under circumstances in which the person's conduct is likely to 19
be viewed by and affront another person who is in the person's 20
physical proximity, who is a minor, and who is not the spouse of 21
the offender: 22

(1) Engage in masturbation; 23

(2) Engage in sexual conduct; 24

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation; 25
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(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity. 27
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(C) (1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C) (2), (3), (4), and (5) of this section. 30
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(2) Except as otherwise provided in division (C) (2) of this section, a violation of division (A) (1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A) (1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of division (A) (1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a 33
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minor, a misdemeanor of the first degree. If the offender 45
previously has been convicted of or pleaded guilty to three or 46
more violations of this section, a violation of division (A) (1) 47
of this section is a misdemeanor of the first degree or, if any 48
person who was likely to view and be affronted by the offender's 49
conduct was a minor, a felony of the fifth degree. 50

(3) Except as otherwise provided in division (C) (3) of 51
this section, a violation of division (A) (2) or (3) of this 52
section is a misdemeanor of the third degree. If the offender 53
previously has been convicted of or pleaded guilty to one 54
violation of this section, a violation of division (A) (2) or (3) 55
of this section is a misdemeanor of the second degree or, if any 56
person who was likely to view and be affronted by the offender's 57
conduct was a minor, a misdemeanor of the first degree. If the 58
offender previously has been convicted of or pleaded guilty to 59
two or more violations of this section, a violation of division 60
(A) (2) or (3) of this section is a misdemeanor of the first 61
degree or, if any person who was likely to view and be affronted 62
by the offender's conduct was a minor, a felony of the fifth 63
degree. 64

(4) Except as otherwise provided in division (C) (4) of 65
this section, a violation of division (B) (1), (2), or (3) of 66
this section is a misdemeanor of the second degree. If the 67
offender previously has been convicted of or pleaded guilty to 68
one violation of this section, a violation of division (B) (1), 69
(2), or (3) of this section is a misdemeanor of the first 70
degree. If the offender previously has been convicted of or 71
pleaded guilty to two or more violations of this section, a 72
violation of division (B) (1), (2), or (3) of this section is a 73
felony of the fifth degree. 74

(5) Except as otherwise provided in division (C) (5) of 75
this section, a violation of division (B) (4) of this section is 76
a misdemeanor of the first degree. If the offender previously 77
has been convicted of or pleaded guilty to any violation of this 78
section, a violation of division (B) (4) of this section is a 79
felony of the fifth degree. 80

(D) (1) If either of the following applies, the court may 81
determine at the time of sentencing whether to classify the 82
offender as a tier I sex offender/child-victim offender for a 83
violation of division (B) (4) of this section: 84

(a) The offender is less than ten years older than the 85
other person. 86

(b) The offender is ten or more years older than the other 87
person and the offender has not previously been convicted of or 88
pleaded guilty to any violation of this section. 89

(2) If the offender is convicted of or pleads guilty to a 90
violation of division (B) (4) of this section, is ten or more 91
years older than the other person, and previously has been 92
convicted of or pleaded guilty to any violation of this section, 93
the court shall issue an order at the time of sentencing that 94
classifies the offender as a tier I sex offender/child-victim 95
offender subject to registration under sections 2950.04, 96
2950.041, 2950.05, and 2950.06 of the Revised Code. 97

Sec. 2907.39. (A) As used in this section: 98

(1) "Adult arcade" means any place to which the public is 99
permitted or invited in which coin-operated, slug-operated, or 100
electronically, electrically, or mechanically controlled still 101
or motion picture machines, projectors, or other image-producing 102
devices are regularly maintained to show images to five or fewer 103

persons per machine at any one time, and in which the images so 104
displayed are distinguished or characterized by their emphasis 105
upon matter exhibiting or describing specified sexual activities 106
or specified anatomical areas. 107

(2) (a) "Adult bookstore," "adult novelty store," or "adult 108
video store" means a commercial establishment that, for any form 109
of consideration, has as a significant or substantial portion of 110
its stock-in-trade in, derives a significant or substantial 111
portion of its revenues from, devotes a significant or 112
substantial portion of its interior business or advertising to, 113
or maintains a substantial section of its sales or display space 114
for the sale or rental of any of the following: 115

(i) Books, magazines, periodicals, or other printed 116
matter, or photographs, films, motion pictures, video cassettes, 117
compact discs, slides, or other visual representations, that are 118
characterized by their emphasis upon the exhibition or 119
description of specified sexual activities or specified 120
anatomical areas; 121

(ii) Instruments, devices, or paraphernalia that are 122
designed for use or marketed primarily for stimulation of human 123
genital organs or for sadomasochistic use or abuse of self or 124
others. 125

(b) "Adult bookstore," "adult novelty store," or "adult 126
video store" includes a commercial establishment as defined in 127
section 2907.38 of the Revised Code. An establishment may have 128
other principal business purposes that do not involve the 129
offering for sale, rental, or viewing of materials exhibiting or 130
describing specified sexual activities or specified anatomical 131
areas and still be categorized as an adult bookstore, adult 132
novelty store, or adult video store. The existence of other 133

principal business purposes does not exempt an establishment 134
from being categorized as an adult bookstore, adult novelty 135
store, or adult video store so long as one of its principal 136
business purposes is offering for sale or rental, for some form 137
of consideration, such materials that exhibit or describe 138
specified sexual activities or specified anatomical areas. 139

(3) "Adult cabaret" means a nightclub, bar, juice bar, 140
restaurant, bottle club, or similar commercial establishment, 141
whether or not alcoholic beverages are served, that regularly 142
features any of the following: 143

(a) Persons who appear in a state of nudity or seminudity; 144

(b) Live performances that are characterized by the 145
exposure of specified anatomical areas or specified sexual 146
activities; 147

(c) Films, motion pictures, video cassettes, slides, or 148
other photographic reproductions that are distinguished or 149
characterized by their emphasis upon the exhibition or 150
description of specified sexual activities or specified 151
anatomical areas. 152

~~(4)~~(4) (a) "Adult cabaret performance" means a performance 153
in a location other than an adult cabaret where minors may be 154
present, that is harmful to juveniles or obscene, regardless of 155
whether or not the performance is for consideration, and that 156
features any of the following: 157

(i) Topless dancers; 158

(ii) Go-go dancers; 159

(iii) Exotic dancers; 160

(iv) Strippers; 161

(v) Performers or entertainers who exhibit a gender identity that is different from the performer's or entertainer's biological sex using clothing, makeup, prosthetic or imitation genitals or breasts, or other physical markers; 162
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(vi) Other similar performers or entertainers who provide entertainment that appeals to a prurient interest. 166
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(b) As used in division (A) (4) (a) of this section, "biological sex" means the biological indication of male and female, including sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience of gender. 168
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(5) "Harmful to juveniles" and "obscene" have the same meanings as in section 2907.01 of the Revised Code. 174
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(6) "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. 176
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~~(5)~~ (7) "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 pursuant to section 4731.15 of the Revised Code, is not an "adult entertainment establishment." 181
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~~(6)~~ (8) "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.

~~(7)~~ (9) "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.

~~(8)~~ (10) "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.

~~(9)(a)~~ (11)(a) "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.

(b) A modeling class or studio is not a nude or seminude model studio and is not subject to this chapter if it is

operated in any of the following ways:	221
(i) By a college or university supported entirely or partly by taxation;	222 223
(ii) 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;	224 225 226 227
(iii) In a structure that 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, if in order to participate in a class in the structure, a student must enroll at least three days in advance of the class and if not more than one nude or seminude model is on the premises at any one time.	228 229 230 231 232 233 234
(10) <u>(12)</u> "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 the female breasts with less than a fully opaque covering of any part of the nipple.	235 236 237 238 239
(11) <u>(13)</u> "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.	240 241 242 243 244
(12) <u>(14)</u> "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.	245 246 247 248
(13) <u>(a)</u> (15) <u>(a)</u> "Sexual encounter establishment" means a	249

business or commercial establishment that, as one of its 250
principal business purposes, offers for any form of 251
consideration a place where either of the following occur: 252

(i) Two or more persons may congregate, associate, or 253
consort for the purpose of engaging in specified sexual 254
activities. 255

(ii) Two or more persons appear nude or seminude for the 256
purpose of displaying their nude or seminude bodies for their 257
receipt of consideration or compensation in any type or form. 258

(b) An establishment where a medical practitioner, 259
psychologist, psychiatrist, or similar professional person 260
licensed by the state engages in medically approved and 261
recognized therapy, including, but not limited to, massage 262
therapy, as regulated pursuant to section 4731.15 of the Revised 263
Code, is not a "sexual encounter establishment." 264

~~(14)~~ (16) "Specified anatomical areas" means the cleft of 265
the buttocks, anus, male or female genitals, or the female 266
breast. 267

~~(15)~~ (17) "Specified sexual activity" means any of the 268
following: 269

(a) Sex acts, normal or perverted, or actual or simulated, 270
including intercourse, oral copulation, masturbation, or sodomy; 271

(b) Excretory functions as a part of or in connection with 272
any of the activities described in division ~~(A) (15) (a)~~ (A) (17) 273
(a) of this section. 274

~~(B)~~ (B) (1) No person knowingly shall allow an individual, 275
including, but not limited to, a patron, customer, or employee, 276
who is under eighteen years of age on the premises of an adult 277

entertainment establishment. 278

(2) No person, with knowledge of its character or content, 279
shall recklessly engage in an adult cabaret performance in a 280
location other than an adult cabaret. 281

(C) No individual who is under eighteen years of age 282
knowingly shall show or give false information concerning the 283
individual's name or age, or other false identification, for the 284
purpose of gaining entrance to an adult entertainment 285
establishment. 286

(D) A person shall not be found guilty of a violation of 287
division ~~(B)~~(B) (1) of this section if the person raises as an 288
affirmative defense and if the jury or, in a nonjury trial, the 289
court finds the person has established by a preponderance of the 290
evidence, all of the following: 291

(1) The individual gaining entrance to the adult 292
entertainment establishment exhibited to an operator, employee, 293
agent, or independent contractor of the adult entertainment 294
establishment a driver's or commercial driver's license or an 295
identification card issued under sections 4507.50 and 4507.52 of 296
the Revised Code showing that the individual was then at least 297
eighteen years of age. 298

(2) The operator, employee, agent, or independent 299
contractor made a bona fide effort to ascertain the true age of 300
the individual gaining entrance to the adult entertainment 301
establishment by checking the identification presented, at the 302
time of entrance, to ascertain that the description on the 303
identification compared with the appearance of the individual 304
and that the identification had not been altered in any way. 305

(3) The operator, employee, agent, or independent 306

contractor had reason to believe that the individual gaining 307
entrance to the adult entertainment establishment was at least 308
eighteen years of age. 309

(E) In any criminal action in which the affirmative 310
defense described in division (D) of this section is raised, the 311
registrar of motor vehicles or the deputy registrar who issued a 312
driver's or commercial driver's license or an identification 313
card under sections 4507.50 and 4507.52 of the Revised Code 314
shall be permitted to submit certified copies of the records, in 315
the registrar's or deputy registrar's possession, of the 316
issuance of the license or identification card in question, in 317
lieu of the testimony of the personnel of the bureau of motor 318
vehicles in the action. 319

(F) (1) Division (B) (2) of this section shall not be 320
construed to prohibit or restrict a bona fide film, theatrical, 321
or other artistic endeavor or performance that is not obscene or 322
harmful to juveniles, shall not be construed to prohibit an 323
adult cabaret performance in a private residence where no minors 324
are present, and shall not be construed to prohibit criminal 325
prosecution for conduct or activity that is obscene or harmful 326
to juveniles under any other applicable section of Chapter 2907. 327
of the Revised Code. 328

(G) (1) Whoever violates division ~~(B)~~(B) (1) of this section 329
is guilty of permitting a juvenile on the premises of an adult 330
entertainment establishment, a misdemeanor of the first degree. 331
Each day a person violates this division constitutes a separate 332
offense. 333

(2) Whoever violates division (B) (2) of this section is 334
guilty of unlawful adult cabaret performance. If the performance 335
involved occurs in the presence of a juvenile under eighteen 336

years of age, except as otherwise provided in this division, a 337
violation of this section is a misdemeanor of the first degree. 338
If the performance involved is obscene, except as otherwise 339
provided in this division, a violation of this section is a 340
felony of the fifth degree. If the performance involved is 341
obscene and a juvenile to whom it is presented is under thirteen 342
years of age, a violation of this section is a felony of the 343
fourth degree. 344

(3) Whoever violates division (C) of this section is 345
guilty of use by a juvenile of false information to enter an 346
adult entertainment establishment, a delinquent act that would 347
be a misdemeanor of the fourth degree if committed by an adult. 348

Sec. 4301.25. (A) The liquor control commission may 349
suspend or revoke any permit issued under this chapter or 350
Chapter 4303. of the Revised Code for the violation of any of 351
the applicable restrictions of either chapter or of any lawful 352
rule of the commission, for other sufficient cause, and for the 353
following causes: 354

(1) Conviction of the holder or the holder's agent or 355
employee for violating division ~~(D)~~ (B) (1) of section 2907.39 of 356
the Revised Code or a section of this chapter or Chapter 4303. 357
of the Revised Code or for a felony; 358

(2) The entry of a judgment pursuant to division (D) or 359
(E) of section 3767.05 of the Revised Code against a permit 360
holder or the holder's agent or employee finding the existence 361
of a nuisance at a liquor permit premises or finding the 362
existence of a nuisance as a result of the operation of a liquor 363
permit premises; 364

(3) Making any false material statement in an application 365

for a permit;	366
(4) Assigning, transferring, or pledging a permit contrary to the rules of the commission;	367 368
(5) Selling or promising to sell beer or intoxicating liquor to a wholesale or retail dealer who is not the holder of a proper permit at the time of the sale or promise;	369 370 371
(6) Failure of the holder of a permit to pay an excise tax together with any penalties imposed by the law relating to that failure and for violation of any rule of the department of taxation in pursuance of the tax and penalties.	372 373 374 375
(B) The liquor control commission shall revoke a permit issued pursuant to this chapter or Chapter 4303. of the Revised Code upon the conviction of the holder of the permit of a violation of division (C) (1) of section 2913.46 of the Revised Code.	376 377 378 379 380
(C) (1) When the commission considers the length of a suspension of a permit, it may consider the volume of the business of the permit holder, so that the length of the suspension is in proportion to the seriousness of the offense and the permit holder's business in order that the suspension serve as a penalty and a deterrent. Evidence as to the volume of business of the permit holder may be offered by the permit holder or subpoenaed by the commission.	381 382 383 384 385 386 387 388
(2) When the commission considers the length of a proposed suspension of a permit and the proposed suspension results from an offense that was committed during a compliance check as defined in section 4301.635 of the Revised Code, the commission may consider whether trickery, deceit, or deception was used in the conduct of the compliance check.	389 390 391 392 393 394

Section 2. That existing sections 2907.09, 2907.39, and	395
4301.25 of the Revised Code are hereby repealed.	396
Section 3. This act shall be known as the Indecent	397
Exposure Modernization Act.	398