

**As Introduced**

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**H. B. No. 245**

**Representatives King, Williams**

**Cosponsors: Representatives Seitz, Click, Manchester, Creech, Gross, Ferguson, Barhorst, Thomas, J., Demetriou, Miller, M., Bird, Stoltzfus, McClain, Kick, Johnson, Lorenz, Willis, Wiggam, Stein, Klopfenstein, Powell, Hall, Lear, Dean, Plummer, Peterson, Claggett, Swearingen, Holmes, Hoops, Pizzulli, Cutrona, Lipps, John, Robb Blasdel, Fowler Arthur, Miller, K., Loychik, Ray, Dobos, Jones**

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**A BILL**

To amend sections 2907.39 and 4301.25 of the Revised Code to prohibit adult cabaret performances in locations other than adult cabarets.

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

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

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

(1) "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. 16

(2) (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: 24

(i) 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; 30

(ii) 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. 34

(b) "Adult bookstore," "adult novelty store," or "adult  
video store" includes a commercial establishment as defined in  
section 2907.38 of the Revised Code. 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 45

business purposes is offering for sale or rental, for some form 46  
of consideration, such materials that exhibit or describe 47  
specified sexual activities or specified anatomical areas. 48

(3) "Adult cabaret" means a nightclub, bar, juice bar, 49  
restaurant, bottle club, or similar commercial establishment, 50  
whether or not alcoholic beverages are served, that regularly 51  
features any of the following: 52

(a) Persons who appear in a state of nudity or seminudity; 53

(b) Live performances that are characterized by the 54  
exposure of specified anatomical areas or specified sexual 55  
activities; 56

(c) Films, motion pictures, video cassettes, slides, or 57  
other photographic reproductions that are distinguished or 58  
characterized by their emphasis upon the exhibition or 59  
description of specified sexual activities or specified 60  
anatomical areas. 61

(4) "Adult cabaret performance" means a performance in a 62  
location other than an adult cabaret that is harmful to 63  
juveniles or obscene and that features topless dancers; go-go 64  
dancers; exotic dancers; strippers; performers or entertainers 65  
who exhibit a gender identity that is different from the 66  
performer's or entertainer's gender assigned at birth using 67  
clothing, makeup, prosthetic or imitation genitals or breasts, 68  
or other physical markers; or other similar performers or 69  
entertainers who provide entertainment that appeals to a 70  
prurient interest, regardless of whether or not the performance 71  
is for consideration. 72

(5) "Adult entertainment" means the sale, rental, or 73  
exhibition, for any form of consideration, of books, films, 74

video cassettes, magazines, periodicals, or live performances 75  
that are characterized by an emphasis on the exposure or display 76  
of specified anatomical areas or specified sexual activity. 77

~~(5)~~ (6) "Adult entertainment establishment" means an adult 78  
arcade, adult bookstore, adult novelty store, adult video store, 79  
adult cabaret, adult motion picture theater, adult theater, nude 80  
or seminude model studio, or sexual encounter establishment. An 81  
establishment in which a medical practitioner, psychologist, 82  
psychiatrist, or similar professional person licensed by the 83  
state engages in medically approved and recognized therapy, 84  
including, but not limited to, massage therapy, as regulated 85  
pursuant to section 4731.15 of the Revised Code, is not an 86  
"adult entertainment establishment." 87

~~(6)~~ (7) "Adult motion picture theater" means a commercial 88  
establishment where films, motion pictures, video cassettes, 89  
slides, or similar photographic reproductions that are 90  
distinguished or characterized by their emphasis upon the 91  
exhibition or description of specified sexual activities or 92  
specified anatomical areas are regularly shown for any form of 93  
consideration. 94

~~(7)~~ (8) "Adult theater" means a theater, concert hall, 95  
auditorium, or similar commercial establishment that, for any 96  
form of consideration, regularly features persons who appear in 97  
a state of nudity or seminudity or live performances that are 98  
characterized by their emphasis upon the exposure of specified 99  
anatomical areas or specified sexual activities. 100

~~(8)~~ (9) "Distinguished or characterized by their emphasis 101  
upon" means the dominant or principal character and theme of the 102  
object described by this phrase. For instance, when the phrase 103  
refers to films "that are distinguished or characterized by 104

their emphasis upon the exhibition or description of specified 105  
sexual activities or specified anatomical areas," the films so 106  
described are those whose dominant or principal character and 107  
theme are the exhibition or description of specified sexual 108  
activities or specified anatomical areas. 109

~~(9)(a)~~ (10)(a) "Nude or seminude model studio" means any 110  
place where a person, who regularly appears in a state of nudity 111  
or seminudity, is provided for money or any other form of 112  
consideration to be observed, sketched, drawn, painted, 113  
sculptured, photographed, or similarly depicted by other 114  
persons. 115

(b) A modeling class or studio is not a nude or seminude 116  
model studio and is not subject to this chapter if it is 117  
operated in any of the following ways: 118

(i) By a college or university supported entirely or 119  
partly by taxation; 120

(ii) By a private college or university that maintains and 121  
operates educational programs, the credits for which are 122  
transferable to a college or university supported entirely or 123  
partly by taxation; 124

(iii) In a structure that has no sign visible from the 125  
exterior of the structure and no other advertising indicating 126  
that a person appearing in a state of nudity or seminudity is 127  
available for viewing, if in order to participate in a class in 128  
the structure, a student must enroll at least three days in 129  
advance of the class and if not more than one nude or seminude 130  
model is on the premises at any one time. 131

~~(10)~~ (11) "Nudity," "nude," or "state of nudity" means the 132  
showing of the human male or female genitals, pubic area, vulva, 133

anus, anal cleft, or cleavage with less than a fully opaque 134  
covering; or the showing of the female breasts with less than a 135  
fully opaque covering of any part of the nipple. 136

~~(11)~~(12) "Regularly features" or "regularly shown" means 137  
a consistent or substantial course of conduct, such that the 138  
films or performances exhibited constitute a substantial portion 139  
of the films or performances offered as a part of the ongoing 140  
business of the adult entertainment establishment. 141

~~(12)~~(13) "Seminude" or "state of seminudity" means a 142  
state of dress in which opaque clothing covers not more than the 143  
genitals, pubic region, and nipple of the female breast, as well 144  
as portions of the body covered by supporting straps or devices. 145

~~(13)~~(a)~~(14)~~(a) "Sexual encounter establishment" means a 146  
business or commercial establishment that, as one of its 147  
principal business purposes, offers for any form of 148  
consideration a place where either of the following occur: 149

(i) Two or more persons may congregate, associate, or 150  
consort for the purpose of engaging in specified sexual 151  
activities. 152

(ii) Two or more persons appear nude or seminude for the 153  
purpose of displaying their nude or seminude bodies for their 154  
receipt of consideration or compensation in any type or form. 155

(b) An establishment where a medical practitioner, 156  
psychologist, psychiatrist, or similar professional person 157  
licensed by the state engages in medically approved and 158  
recognized therapy, including, but not limited to, massage 159  
therapy, as regulated pursuant to section 4731.15 of the Revised 160  
Code, is not a "sexual encounter establishment." 161

~~(14)~~(15) "Specified anatomical areas" means the cleft of 162

the buttocks, anus, male or female genitals, or the female breast. 163  
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~~(15)~~ (16) "Specified sexual activity" means any of the following: 165  
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(a) Sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; 167  
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(b) Excretory functions as a part of or in connection with any of the activities described in division ~~(A) (15) (a)~~ (A) (16) (a) of this section. 169  
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(17) "Harmful to juveniles" and "obscene" have the same meanings as in section 2907.01 of the Revised Code. 172  
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~~(B)~~ (B) (1) No person knowingly shall allow an individual, including, but not limited to, a patron, customer, or employee, who is under eighteen years of age on the premises of an adult entertainment establishment. 174  
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(2) No person, with knowledge of its character or content, shall recklessly engage in an adult cabaret performance in a location other than an adult cabaret. 178  
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(C) No individual who is under eighteen years of age knowingly shall show or give false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment. 181  
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(D) A person shall not be found guilty of a violation of division ~~(B)~~ (B) (1) of this section 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: 186  
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(1) The individual gaining entrance to the adult 191  
entertainment establishment exhibited to an operator, employee, 192  
agent, or independent contractor of the adult entertainment 193  
establishment a driver's or commercial driver's license or an 194  
identification card issued under sections 4507.50 and 4507.52 of 195  
the Revised Code showing that the individual was then at least 196  
eighteen years of age. 197

(2) The operator, employee, agent, or independent 198  
contractor made a bona fide effort to ascertain the true age of 199  
the individual gaining entrance to the adult entertainment 200  
establishment by checking the identification presented, at the 201  
time of entrance, to ascertain that the description on the 202  
identification compared with the appearance of the individual 203  
and that the identification had not been altered in any way. 204

(3) The operator, employee, agent, or independent 205  
contractor had reason to believe that the individual gaining 206  
entrance to the adult entertainment establishment was at least 207  
eighteen years of age. 208

(E) In any criminal action in which the affirmative 209  
defense described in division (D) of this section is raised, the 210  
registrar of motor vehicles or the deputy registrar who issued a 211  
driver's or commercial driver's license or an identification 212  
card under sections 4507.50 and 4507.52 of the Revised Code 213  
shall be permitted to submit certified copies of the records, in 214  
the registrar's or deputy registrar's possession, of the 215  
issuance of the license or identification card in question, in 216  
lieu of the testimony of the personnel of the bureau of motor 217  
vehicles in the action. 218

(F) (1) Whoever violates division ~~(D)~~ (B) (1) of this section 219  
is guilty of permitting a juvenile on the premises of an adult 220

entertainment establishment, a misdemeanor of the first degree. 221  
Each day a person violates this division constitutes a separate 222  
offense. 223

(2) Whoever violates division (B) (2) of this section is 224  
guilty of unlawful adult cabaret performance. If the performance 225  
involved occurs in the presence of a juvenile under eighteen 226  
years of age, except as otherwise provided in this division, a 227  
violation of this section is a misdemeanor of the first degree. 228  
If the performance involved is obscene, except as otherwise 229  
provided in this division, a violation of this section is a 230  
felony of the fifth degree. If the performance involved is 231  
obscene and a juvenile to whom it is presented is under thirteen 232  
years of age, a violation of this section is a felony of the 233  
fourth degree. 234

(3) Whoever violates division (C) of this section is 235  
guilty of use by a juvenile of false information to enter an 236  
adult entertainment establishment, a delinquent act that would 237  
be a misdemeanor of the fourth degree if committed by an adult. 238

**Sec. 4301.25.** (A) The liquor control commission may 239  
suspend or revoke any permit issued under this chapter or 240  
Chapter 4303. of the Revised Code for the violation of any of 241  
the applicable restrictions of either chapter or of any lawful 242  
rule of the commission, for other sufficient cause, and for the 243  
following causes: 244

(1) Conviction of the holder or the holder's agent or 245  
employee for violating division ~~(B)~~ (B) (1) of section 2907.39 of 246  
the Revised Code or a section of this chapter or Chapter 4303. 247  
of the Revised Code or for a felony; 248

(2) The entry of a judgment pursuant to division (D) or 249

(E) of section 3767.05 of the Revised Code against a permit holder or the holder's agent or employee finding the existence of a nuisance at a liquor permit premises or finding the existence of a nuisance as a result of the operation of a liquor permit premises;	250 251 252 253 254
(3) Making any false material statement in an application for a permit;	255 256
(4) Assigning, transferring, or pledging a permit contrary to the rules of the commission;	257 258
(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;	259 260 261
(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.	262 263 264 265
(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.	266 267 268 269 270
(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.	271 272 273 274 275 276 277 278

(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.

**Section 2.** That existing sections 2907.39 and 4301.25 of the Revised Code are hereby repealed.