

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**H. B. No. 556**

**Representative Mathews**

---

**A BILL**

To amend sections 2907.32 and 2907.35 of the  
Revised Code to create criminal liability for  
certain teachers and librarians for the offense  
of pandering obscenity.

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

**Section 1.** That sections 2907.32 and 2907.35 of the  
Revised Code be amended to read as follows:

**Sec. 2907.32.** (A) As used in this section:

(1) "Faculty member" means any person who is tasked with  
providing academic research or teaching at a private or public  
institution of higher education, as those institutions are  
defined in section 3365.01 of the Revised Code.

(2) "Other person having a proper interest" does not  
include a teacher who is not a health or biology teacher or a  
school librarian.

(3) "School librarian" means a librarian employed by a  
school district, other public school, as defined in section  
3301.0711 of the Revised Code, or chartered nonpublic school and  
a librarian employed in a school district public library

established in accordance with sections 3375.14 to 3375.18 of 19  
the Revised Code. 20

(4) "Teacher" has the same meaning as in section 3319.09 21  
of the Revised Code and includes an individual who has a teacher 22  
certification under section 3301.071 of the Revised Code. 23

(B) No person, with knowledge of the character of the 24  
material or performance involved, shall do any of the following: 25

(1) Create, reproduce, or publish any obscene material, 26  
when the offender knows that the material is to be used for 27  
commercial exploitation or will be publicly disseminated or 28  
displayed, or when the offender is reckless in that regard; 29

(2) Promote or advertise for sale, delivery, or 30  
dissemination; sell, deliver, publicly disseminate, publicly 31  
display, exhibit, present, rent, or provide; or offer or agree 32  
to sell, deliver, publicly disseminate, publicly display, 33  
exhibit, present, rent, or provide, any obscene material; 34

(3) Create, direct, or produce an obscene performance, 35  
when the offender knows that it is to be used for commercial 36  
exploitation or will be publicly presented, or when the offender 37  
is reckless in that regard; 38

(4) Advertise or promote an obscene performance for 39  
presentation, or present or participate in presenting an obscene 40  
performance, when the performance is presented publicly, or when 41  
admission is charged; 42

(5) Buy, procure, possess, or control any obscene material 43  
with purpose to violate division ~~(A)(2)~~ (B)(2) or (4) of this 44  
section. 45

~~(B)~~ (C) It is an affirmative defense to a charge under 46

this section, that the material or performance involved was 47  
disseminated or presented for a bona fide medical, scientific, 48  
~~educational, religious, governmental, judicial, or other proper~~ 49  
purpose, by or to a physician, psychologist, sociologist, 50  
scientist, health or biology teacher, faculty member, person 51  
pursuing bona fide studies or research, librarian other than a 52  
school librarian, clergyman member of the clergy, prosecutor, 53  
judge, or other person having a proper interest in the material 54  
or performance. 55

~~(C)~~ (D) Whoever violates this section is guilty of 56  
pandering obscenity, a felony of the fifth degree. If the 57  
offender previously has been convicted of a violation of this 58  
section or of section 2907.31 of the Revised Code, then 59  
pandering obscenity is a felony of the fourth degree. 60

**Sec. 2907.35.** (A) An owner or manager, or agent or 61  
employee of an owner or manager, of a bookstore, newsstand, 62  
theater, or other commercial establishment engaged in selling 63  
materials or exhibiting performances, who, in the course of 64  
business: 65

(1) Possesses five or more identical or substantially 66  
similar obscene articles, having knowledge of their character, 67  
is presumed to possess them in violation of division ~~(A) (5)~~ (B) 68  
(5) of section 2907.32 of the Revised Code; 69

(2) Does any of the acts prohibited by section 2907.31 or 70  
2907.32 of the Revised Code, is presumed to have knowledge of 71  
the character of the material or performance involved, if the 72  
owner, manager, or agent or employee of the owner or manager has 73  
actual notice of the nature of such material or performance, 74  
whether or not the owner, manager, or agent or employee of the 75  
owner or manager has precise knowledge of its contents. 76

(B) Without limitation on the manner in which such notice 77  
may be given, actual notice of the character of material or a 78  
performance may be given in writing by the chief legal officer 79  
of the jurisdiction in which the person to whom the notice is 80  
directed does business. Such notice, regardless of the manner in 81  
which it is given, shall identify the sender, identify the 82  
material or performance involved, state whether it is obscene or 83  
harmful to juveniles, and bear the date of such notice. 84

(C) Sections 2907.31 and 2907.32 of the Revised Code do 85  
not apply to a motion picture operator or projectionist acting 86  
within the scope of employment as an employee of the owner or 87  
manager of a theater or other place for the showing of motion 88  
pictures to the general public, and having no managerial 89  
responsibility or financial interest in the operator's or 90  
projectionist's place of employment, other than wages. 91

(D) (1) Sections 2907.31, 2907.311, 2907.32, 2907.321, 92  
2907.322, 2907.323, and 2907.34 and division (A) of section 93  
2907.33 of the Revised Code do not apply to a person solely 94  
because the person provided access or connection to or from an 95  
electronic method of remotely transferring information not under 96  
that person's control, including having provided capabilities 97  
that are incidental to providing access or connection to or from 98  
the electronic method of remotely transferring the information, 99  
and that do not include the creation of the content of the 100  
material that is the subject of the access or connection. 101

(2) Division (D) (1) of this section does not apply to a 102  
person who conspires with an entity actively involved in the 103  
creation or knowing distribution of material in violation of 104  
section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 105  
2907.323, 2907.33, or 2907.34 of the Revised Code or who 106

knowingly advertises the availability of material of that 107  
nature. 108

(3) Division (D)(1) of this section does not apply to a 109  
person who provides access or connection to an electronic method 110  
of remotely transferring information that is engaged in the 111  
violation of section 2907.31, 2907.311, 2907.32, 2907.321, 112  
2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code and 113  
that contains content that person has selected and introduced 114  
into the electronic method of remotely transferring information 115  
or content over which that person exercises editorial control. 116

(E) An employer is not guilty of a violation of section 117  
2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 118  
2907.33, or 2907.34 of the Revised Code based on the actions of 119  
an employee or agent of the employer unless the employee's or 120  
agent's conduct is within the scope of employee's or agent's 121  
employment or agency, and the employer does either of the 122  
following: 123

(1) With knowledge of the employee's or agent's conduct, 124  
the employer authorizes or ratifies the conduct. 125

(2) The employer recklessly disregards the employee's or 126  
agent's conduct. 127

(F) It is an affirmative defense to a charge under section 128  
2907.31 or 2907.311 of the Revised Code as the section applies 129  
to an image transmitted through the internet or another 130  
electronic method of remotely transmitting information that the 131  
person charged with violating the section has taken, in good 132  
faith, reasonable, effective, and appropriate actions under the 133  
circumstances to restrict or prevent access by juveniles to 134  
material that is harmful to juveniles, including any method that 135

is feasible under available technology. 136

(G) If any provision of this section, or the application 137  
of any provision of this section to any person or circumstance, 138  
is held invalid, the invalidity does not affect other provisions 139  
or applications of this section or related sections that can be 140  
given effect without the invalid provision or application. To 141  
this end, the provisions are severable. 142

**Section 2.** That existing sections 2907.32 and 2907.35 of 143  
the Revised Code are hereby repealed. 144