As Introduced

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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

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

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:

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:

(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;

(2) Engage in sexual conduct or masturbation;

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is in the person's physical proximity, who is a minor, and who is not the spouse of the offender:

(1) Engage in masturbation;

(2) Engage in sexual conduct;

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;

(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(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.

(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

minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(2) or (3) 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 minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

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

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

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

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

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

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

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.

(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:

(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;

(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.

(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 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.

(3) "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;

(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.

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

(i) Topless dancers;

(ii) Go-go dancers;

(iii) Exotic dancers;

(iv) Strippers;

(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;

(vi) Other similar performers or entertainers who provide entertainment that appeals to a prurient interest.

(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.

(5) "Harmful to juveniles" and "obscene" have the same meanings as in section 2907.01 of the Revised Code.

(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.

~~(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."

~~(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:

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

(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;

(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.

~~(10)~~ (12) "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.

~~(11)~~ (13) "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.

~~(12)~~ (14) "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.

~~(13)(a)~~ (15)(a) "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 either of the following occur:

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

(ii) 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.

(b) 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 pursuant to section 4731.15 of the Revised Code, is not a "sexual encounter establishment."

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

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

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

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

~~(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.

(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.

(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.

(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:

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

(2) 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.

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

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

(E) In any criminal action in which the affirmative defense described in division (D) of this section 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 under sections 4507.50 and 4507.52 of the Revised Code shall 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 question, in lieu of the testimony of the personnel of the bureau of motor vehicles in the action.

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

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

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

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

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

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

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

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

(3) Making any false material statement in an application

for a permit;

(4) Assigning, transferring, or pledging a permit contrary to the rules of the commission;

(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;

(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.

(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.

(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.

(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 2907.09, 2907.39, and 4301.25 of the Revised Code are hereby repealed.

Section 3. This act shall be known as the Indecent Exposure Modernization Act.