



Ohio Revised Code

Section 2907.40 Illegally operating sexually oriented business.

Effective: September 11, 2008

Legislation: Senate Bill 183 - 127th General Assembly

(A) As used in this section:

- (1) "Adult bookstore" or "adult video store" means a commercial establishment that has as a significant or substantial portion of its stock in trade or inventory 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, for any form of consideration, of 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.
- (2) "Adult cabaret" has the same meaning as in section 2907.39 of the Revised Code.
- (3) "Adult motion picture theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions that are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five individuals for any form of consideration.
- (4) "Characterized by" means describing the essential character or quality of an item.
- (5) "Employee" means any individual who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
- (6) "Nudity," "nude," or "state of nudity" has the same meaning as in section 2907.39 of the Revised Code.
- (7) "Operator" means any individual on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises.
- (8) "Patron" means any individual on the premises of a sexually oriented business except for any of the following:



- (a) An operator or an employee of the sexually oriented business;
 - (b) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;
 - (c) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee's or volunteer's duties as a public employee or volunteer.
- (9) "Premises" means the real property on which the sexually oriented business is located and all appurtenances to the real property, including, but not limited, to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the sexually oriented business.
- (10) "Regularly" means consistently or repeatedly.
- (11) "Seminude" or "state of seminudity" has the same meaning as in section 2907.39 of the Revised Code.
- (12) "Sexual device" means any three-dimensional object designed and marketed for stimulation of the male or female human genitals or anus or female breasts or for sadomasochistic use or abuse of oneself or others, including, but not limited to, dildos, vibrators, penis pumps, and physical representations of the human genital organs, but not including devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.
- (13) "Sexual device shop" means a commercial establishment that regularly features sexual devices, but not including any pharmacy, drug store, medical clinic, or establishment primarily dedicated to providing medical or healthcare products or services, and not including any commercial establishment that does not restrict access to its premises by reason of age.
- (14) "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between individuals of the opposite sex when one or more of the individuals is nude or seminude.
- (15) "Sexually oriented business" means an adult bookstore, adult video store, adult cabaret, adult motion picture theater, sexual device shop, or sexual encounter center, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.
- (16) "Specified anatomical areas" includes human genitals, pubic region, and buttocks and the human female breast below a point immediately above the top of the areola.



(17) "Specified sexual activity" means sexual intercourse, oral copulation, masturbation, or sodomy, or excretory functions as a part of or in connection with any of these activities.

(B) No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business that holds a liquor permit pursuant to Chapter 4303. of the Revised Code may remain open until the hour specified in that permit if it does not conduct, offer, or allow sexually oriented entertainment activity in which the performers appear nude.

(C)(1) No patron who is not a member of the employee's immediate family shall knowingly touch any employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or seminude.

(2) No employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.

(D) Whoever violates division (B) of this section is guilty of illegally operating a sexually oriented business, a misdemeanor of the first degree.

(E) Whoever violates division (C) of this section is guilty of illegal sexually oriented activity in a sexually oriented business. If the offender touches a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the first degree. If the offender does not touch a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the fourth degree.
