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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 556
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Matthews

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SUMMARY

- Modifies the affirmative defense for pandering obscenity as follows:
 - The affirmative defense does not apply if the material or performance involved was disseminated or presented for a bona fide educational purpose.
 - The affirmative defense does not apply to a teacher, unless the individual is a health or biology teacher or a faculty member.
 - The affirmative defense does not apply to school librarians.

DETAILED ANALYSIS

Affirmative defense to pandering obscenity

Current law, unchanged by the bill, prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following:¹

- Creating, reproducing, or publishing any obscene material, when the offender knows that the material is to be used for commercial exploitation or will be publicly disseminated or displayed, or when the offender is reckless in that regard;
- Promoting or advertising for sale, delivery, or dissemination; selling, delivering, publicly disseminating, publicly displaying, exhibiting, presenting, renting, or providing; or offering or agreeing to sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide any obscene material;

¹ R.C. 2907.32(B).

- Creating, directing, or producing an obscene performance, when the offender knows that it is to be used for commercial exploitation or will be publicly presented, or when the offender is reckless in that regard;
- Advertising or promoting an obscene performance for presentation, or presenting or participating in presenting an obscene performance, when the performance is presented publicly, or when admission is charged;
- Buying, procuring, possessing, or controlling any obscene material with purpose to violate the prohibitions listed in the second and fourth bullet points above.

A violation of any of the prohibitions listed above is pandering obscenity.² Under current law, the affirmative defense for pandering obscenity applies if the material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

The bill modifies the affirmative defense for pandering obscenity in three ways.

- First, the affirmative defense does not apply if the material or performance involved was disseminated or presented for a bona fide educational purpose.
- Second, the affirmative defense does not apply to a “teacher,” unless the individual is a health or biology teacher or a “faculty member.”
- Third, the affirmative defense does not apply to a “school librarian.”

Under the bill, the affirmative defense for pandering obscenity applies if the material or performance involved or disseminated or presented for a bona fide medical, scientific, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, health or biology teacher, faculty member, person pursuing bona fide studies or research, librarian, other than a school librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.³

Penalty

The bill retains the current law penalty for a violation of the offense as a fifth degree felony. If the offender previously has been convicted of a violation of pandering obscenity or disseminating matter harmful to juveniles, the penalty for a violation of the offense is a fourth degree felony.⁴

² R.C. 2907.32(D).

³ R.C. 2907.32(C).

⁴ R.C. 2907.32(D).

Definitions

The bill uses the following definitions in the bill:

- **“Faculty member”** means any person who is tasked with providing academic research or teaching at a private or public institution of higher education.⁵
- **“Other person having a proper interest”** does not include a teacher who is not a health or biology teacher or a school librarian.⁶
- **“School librarian”** means a librarian employed by a school district, other public school, or chartered nonpublic school and a librarian employed in a school district public library.⁷
- **“Teacher”** means all persons licensed to teach and who are employed in the public schools of Ohio as instructors, principals, supervisors, superintendents, or in any other educational position for which the State Board of Education requires licensure under specified Revised Code provisions and who are employed in an educational position, as determined by the State Board of Education, under programs provided for by federal acts or regulations and financed in whole or in part from federal funds, but for which no licensure requirements for the position can be made under the provisions of such federal acts or regulations. “Teacher” also includes an individual who has a teacher certification from a nonchartered, nontax-supported school.⁸

Technical changes

The bill makes necessary cross-reference changes.⁹

HISTORY

Action	Date
Introduced	05-15-24

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⁵ R.C. 2907.32(A)(1) and 3365.01, not in the bill.

⁶ R.C. 2907.32(A)(2).

⁷ R.C. 2907.32(A)(3) and 3301.0711 and 3375.14 to 3375.18, not in the bill.

⁸ R.C. 2907.32(A)(4) and 3319.09 and 3301.071, not in the bill.

⁹ R.C. 2907.35(A)(1).