SECOND REGULAR SESSION

SENATE BILL NO. 617

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Pre-filed December 1, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 573, RSMo, by adding thereto six new sections relating to sexually oriented businesses, with penalty provisions and a severability clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 573, RSMo, is amended by adding thereto six new sections, to be known as sections 573.525, 573.528, 573.531, 573.534, 573.537, and 573.540, to read as follows:

573.525. 1. It is the purpose of sections 573.525 to 573.537 to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of this state, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the state. The provisions of sections 573.525 to 573.537 have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of sections 573.525 to 573.537 to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of sections 573.525 to 573.537 to condone or legitimize the distribution of obscene material.

2. The general assembly finds that:

(1) Sexually oriented businesses, as a category of commercial enterprises, are associated with a wide variety of adverse secondary effects, including but not limited to personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency,
obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation;

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area;

(3) Each of the foregoing negative secondary effects constitutes a harm which the state has a substantial interest in preventing or abating, or both. Such substantial government interest in preventing secondary effects, which is the state's rationale for sections 573.525 to 573.537, exists independent of any comparative analysis between sexually oriented and nonsexually oriented businesses. Additionally, the state's interest in regulating sexually oriented businesses extends to preventing future secondary effects of current or future sexually oriented businesses that may locate in the state.

573.528. For purposes of sections 573.525 to 573.537, the following terms shall mean:

(1) "Adult bookstore" or "adult video store", a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. A "principal business activity" exists where the commercial establishment:

(a) Has a substantial portion of its displayed merchandise which consists of such items; or

(b) Has a substantial portion of the wholesale value of its displayed merchandise which consists of such items; or

(c) Has a substantial portion of the retail value of its displayed merchandise which consists of such items; or

(d) Derives a substantial portion of its revenues from the sale or rental, for any form of consideration, of such items; or
(e) Maintains a substantial section of its interior business space for the sale or rental of such items; or

(f) Maintains an adult arcade. "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or 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 where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas;

(2) "Adult cabaret", a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude;

(3) "Adult motion picture theater", a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions, which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five persons for any form of consideration;

(4) "Characterized by", describing the essential character or dominant theme of an item. As applied in sections 573.525 to 573.537, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America;

(5) "Employ", "employee", or "employment", describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises;

(6) "Establish" or "establishment", any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
(c) The addition of any sexually oriented business to any other
existing sexually oriented business;

(7) "Influential interest", any of the following:
(a) The actual power to operate the sexually oriented business
or control the operation, management, or policies of the sexually
oriented business or legal entity which operates the sexually oriented
business;
(b) Ownership of a financial interest of thirty percent or more
of a business or of any class of voting securities of a business; or
(c) Holding an office, such as president, vice president, secretary,
treasurer, managing member, or managing director, in a legal entity
which operates the sexually oriented business;

(8) "Nudity" or "state of nudity", 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 breast
with less than a fully opaque covering of any part of the nipple or
areola;

(9) "Operator", any person 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. A person
may be found to be operating or causing to be operated a sexually
oriented business whether or not such person is an owner, part owner,
or licensee of the business;

(10) "Premises", the real property upon which the sexually
oriented business is located, and all appurtenances thereto and
buildings thereon, including but not limited to the sexually oriented
business, the grounds, private walkways, and parking lots or parking
garages or both, adjacent thereto, under the ownership, control, or
supervision of the licensee, as described in the application for a
sexually oriented business license;

(11) "Regularly", the consistent and repeated doing of the act so
described;

(12) "Semi-nude" or "state of semi-nudity", the showing of the
female breast below a horizontal line across the top of the areola and
extending across the width of the breast at such point, or the showing
of the male or female buttocks. Such definition includes the lower
portion of the human female breast, but shall not include any portion
of the cleavage of the human female breasts exhibited by a bikini,
dress, blouse, shirt, leotard, or similar wearing apparel provided the
areola is not exposed in whole or in part;

(13) "Semi-nude model studio", a place where persons regularly
appear in a state of semi-nudity for money or any form of consideration
in order to be observed, sketched, drawn, painted, sculptured,
photographed, or similarly depicted by other persons. Such definition
shall not apply to any place where persons appearing in a state of semi-
nudity do so in a modeling class operated:

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

(b) By a private college or university which maintains and
operates educational programs in which credits are transferable to a
college, junior college, or university supported entirely or partly by
taxation; or

(c) In a structure:

a. Which has no sign visible from the exterior of the structure
and no other advertising that indicates a semi-nude person is available
for viewing; and

b. Where, in order to participate in a class, a student must enroll
at least three days in advance of the class;

(14) "Sexual encounter center", a business or commercial
enterprise that, as one of its principal purposes, purports to offer for
any form of consideration, physical contact in the form of wrestling or
tumbling between persons of the opposite sex when one or more of the
persons is semi-nude;

(15) "Sexually oriented business", an adult bookstore or adult
video store, an adult cabaret, an adult motion picture theater, a semi-
nude model studio, or a sexual encounter center;

(16) "Specified anatomical areas":

(a) Less than completely and opaquely covered: human genitals,
pubic region, buttock, and female breast below a point immediately
above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if
completely and opaquely covered;

(17) "Specified criminal act", any of the following specified
offenses for which less than eight years has elapsed since the date of
conviction or the date of release from confinement for the conviction,
whichever is later:

(a) Rape and sexual assault offenses;
(b) Sexual offenses involving minors;
(c) Offenses involving prostitution;
(d) Obscenity offenses;
(e) Offenses involving money laundering;
(f) Offenses involving tax evasion;
(g) Any attempt, solicitation, or conspiracy to commit one of the
offenses listed in paragraphs (a) to (f) of this subdivision; or
(h) Any offense committed in another jurisdiction which if
committed in this state would have constituted an offense listed in
paragraphs (a) to (g) of this subdivision;

(18) "Specified sexual activity", any of the following:
(a) Intercourse, oral copulation, masturbation, or sodomy; or
(b) Excretory functions as a part of or in connection with any of
the activities describe in paragraph (a) of this subdivision;

(19) "Substantial", at least thirty percent of the item or items so
modified;

(20) "Viewing room", the room, booth, or area where a patron of
a sexually oriented business would ordinarily be positioned while
watching a film, video cassette, digital video disc, or other video
reproduction.

573.531. 1. No person shall establish a sexually oriented business
within one thousand feet of any preexisting primary or secondary
school, house of worship, state-licensed day care facility, public library,
public park, residence, or other sexually oriented business. This
subsection shall not apply to any sexually oriented business lawfully
established prior to the effective date of sections 573.525 to
573.537. For purposes of this subsection, measurements shall be made
in a straight line, without regard to intervening structures or objects,
from the closest portion of the parcel containing the sexually oriented
business to the closest portion of the parcel containing the preexisting
primary or secondary school, house of worship, state-licensed day care
facility, public library, public park, residence, or other sexually
oriented business.
2. No person shall establish a sexually oriented business if a person with an influential interest in the sexually oriented business has been convicted of or pled guilty or nolo contendere to a specified criminal act.

3. No person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity.

4. No employee shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the employee, while semi-nude, shall be and remain on a fixed stage at least six feet from all patrons and at least eighteen inches from the floor in a room of at least six hundred square feet.

5. No employee, who appears in a semi-nude condition in a sexually oriented business, shall knowingly or intentionally touch a patron or the clothing of a patron in a sexually oriented business.

6. A sexually oriented business, which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction, characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose;

(2) An operator's station shall not exceed thirty-two square feet of floor area;

(3) If the premises has two or more operator's stations designated, the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations;

(4) The view required under this subsection shall be by direct line of sight from the operator's station;

(5) It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by such
operator station; and
(6) It shall be the duty of the operator and of any employees present on the premises to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks, or other materials or enclosures at all times that any patron is present on the premises.

7. Sexually oriented businesses that do not have stages or interior configurations which meet at least the minimum requirements of sections 573.525 to 573.537 shall be given one hundred eighty days after the effective date of sections 573.525 to 573.537 to comply with the stage and building requirements of sections 573.525 to 573.537. During such one-hundred-eighty-day period, any employee who appears within view of any patron in a semi-nude condition shall remain, while semi-nude, at least six feet from all patrons.

8. No operator shall allow or permit a sexually oriented business to be or remain open between the hours of 12:00 midnight and 6:00 a.m. on any day.

9. No person shall knowingly or intentionally sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

10. No person shall knowingly allow a person under the age of eighteen years on the premises of a sexually oriented business.

573.534. Sections 573.525 to 573.537 do not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of sections 573.525 to 573.537. Notwithstanding any other provision of law to the contrary, for purposes of sections 573.525 to 573.537, an act by an employee shall be imputed to the sexually oriented business for purposes of finding a violation of sections 573.525 to 573.537 only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

573.537. 1. Any person, business, or entity violating or refusing to comply with any provision of sections 573.525 to 573.537 shall, upon
conviction, be deemed guilty of a misdemeanor and shall be punished
by imposition of a fine not to exceed five hundred dollars or by
imprisonment for a period not to exceed ninety days, or both. Each day
that a violation is permitted to exist or occur, and each separate
occurrence shall constitute a separate offense.

2. Any premises, building, dwelling, or other structure in which
a sexually oriented business is repeatedly operated or maintained in
violation of sections 573.525 to 573.537 shall constitute a public
nuisance and shall be subject to civil abatement proceedings initiated
by the state in a court of competent jurisdiction. Each day that a
violation is permitted to exist or occur shall constitute a separate
operation or maintenance of the violation.

3. Notwithstanding the provisions of this section, the state may
employ any remedy available at law or in equity to prevent or remedy
a violation of any provision of sections 573.525 to 573.537.

573.540. Nothing in sections 573.525 to 573.537 shall preempt or
prevent any political subdivision in this state from maintaining,
enacting, or enforcing any local ordinance, rule, regulation, resolution,
or similar law concerning the regulation of sexually oriented
businesses or similar adult oriented businesses.

Section B. If any provision of sections 573.525 to 573.540 or the
application thereof to anyone or to any circumstances is held invalid, the
remainder of those sections and the application of such provisions to others or
other circumstances shall not be affected thereby.