

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 32
93RD GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 17, 2005, with recommendation that the Senate Committee Substitute do pass.

0099S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 567.080 and 573.503, RSMo, and to enact in lieu thereof ten 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Section A. Sections 567.080 and 573.503, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 67.2540, 67.2542, 67.2546, 67.2548, 67.2552, 67.2554, 67.2556, 311.488, 567.080 and 573.503, to read as follows:

67.2540. As used in sections 67.2540 to 67.2556, the following terms mean:

(1) "Adult cabaret", a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity, as defined in section 573.500, RSMo, or semi-nudity in the performance of their duties;

(2) "Employee", a person who is at least twenty-one years of age and who performs any service on the premises of a sexually-oriented business or adult cabaret on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not said person is paid a salary, wage, or other compensation by the operator of said business. The term employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

the premises, or for the delivery of goods to the premises;

(3) "Licensee", a person in whose name a license to operate a sexually-oriented business has been issued, as well as the individual listed as an applicant on the application for a license and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually-oriented business;

(4) "Nudity" or a "state of nudity", the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or anal cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state;

(5) "Nuisance", any place in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued, or exists, or any place, in or upon which lewd, indecent, lascivious, or obscene films or plate negatives, film or plate positives, films designed to be projected on a screen for exhibition, or glass slides either in negative or positive form designed for exhibition by projection on a screen, are photographed, manufactured, developed, screened, exhibited, or otherwise prepared or shown, and the personal property and contents used in conducting and maintaining any such place for any such purpose. The provisions of this section shall not affect any newspaper, magazine, or other publication entered as second class matter by the post office department;

(6) "Person", an individual, proprietorship, partnership, corporation, association, or other legal entity;

(7) "Semi-nude" or in a "semi-nude condition", a state of dress in which opaque clothing fails to cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple and areola of the female breast below a horizontal line across the top of the areola at its highest point. Semi-nudity shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by wearing apparel provided the areola is not exposed in whole or part;

(8) "Sexually-oriented business", any business which offers its patrons goods of which a substantial portion are sexually-oriented material, any business where more than ten percent of display space is used for sexually-oriented materials shall be presumed to be a sexually-

oriented business;

(9) "Sexually-oriented materials", any textual, pictorial, or three dimensional material, or film, motion picture, DVD, video cassette, or similar photographic reproduction, that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors;

(10) "Specified criminal activity", includes the following offenses:

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling prohibited under Missouri law; or distribution of a controlled substance; or any similar offenses described in this subdivision under the criminal or penal code of other states or countries;

(b) For which:

a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

b. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period;

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant;

(11) "Specified sexual activities", includes the following acts:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) Excretory functions as part of or in connection with any of the activities set forth in this subdivision.

67.2542. 1. Sexually-oriented businesses shall pay to the department of revenue an admission tax of five dollars for each person entering a sexually-oriented business. The fee shall be deposited to the credit of the state school moneys fund. Nothing in this section shall preclude any sexually-oriented business from charging any amount deemed necessary for admission to any person entering a sexually-oriented business.

2. A tax is imposed on the adjusted gross receipts received from a sexually-oriented business at a rate of twenty percent. The taxes imposed by this section shall be returned to the director of revenue. All checks and drafts remitted for payment of these taxes shall be made payable to the director of revenue. All functions incident to the administration, collection, enforcement, and operation of the tax imposed by sections 144.010 to 144.525, RSMo, shall be applicable to the taxes and fees imposed by this section. The amount of the adjusted gross receipts tax shall be deposited in the state treasury to the credit of the state school moneys fund.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 67.2540 to 67.2556 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

67.2546. 1. A person who operates or causes to be operated a sexually-oriented business shall be prohibited from exhibiting in a viewing room on the premises a film, video cassette, DVD, or other video reproduction that depicts specified sexual activities.

2. If a sexually-oriented business allows specified criminal

activity or specified sexual activity on its premises or otherwise fails to comply with the provisions of subsection 1 of this section, it shall be considered a nuisance as defined by section 67.2540, and shall be closed pursuant to section 567.080, RSMo.

3. A person violating the provisions of subsection 1 of this section is guilty of a class A misdemeanor.

67.2548. 1. A sexually-oriented business shall not employ any person who is not yet twenty-one years of age.

2. A person violating the provisions of subsection 1 of this section is guilty of a class A misdemeanor.

67.2552. 1. It shall be a class A misdemeanor for a person to knowingly and intentionally appear in a state of nudity or depict, simulate, or perform specified sexual activities in a sexually-oriented business or adult cabaret.

2. It shall be a class A misdemeanor for a person to appear knowingly or intentionally in a sexually-oriented business or adult cabaret in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet from any patron or customer and on a stage at least two feet from the floor and behind a railing no less than twenty-four inches in height.

3. It shall be a class A misdemeanor for an employee, while semi-nude in a sexually-oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually-oriented business.

4. It shall be a class A misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

5. It shall be a class A misdemeanor if a person knowingly allows on the premises of a sexually-oriented business a person under the age of twenty-one years, except for a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

6. No sexually-oriented business may remain open at any time between the hours of ten p.m. and ten a.m. on weekdays and Saturdays. Such businesses shall be closed on all official state or federal holidays and Sundays.

67.2554. 1. Any county, city, town, or village may create an ordinance requiring sexually-oriented businesses or adult cabarets to be licensed and may collect a non-refundable deposit fee to be paid prior to the processing of the licensing application. The application for such a license shall require the applicant to provide the following information:

(1) The applicant's name or any other name, including a stage name or alias used by the individual;

(2) The applicant's age, date of birth, and place of birth;

(3) The address and telephone number of the applicant's present residence;

(4) The address and telephone number of the applicant's present business;

(5) The number on the applicant's driver's license or other state-issued identification card;

(6) The date on which the applicant's driver's license or other state-issued identification card was issued;

(7) The state that issued the applicant's driver's license or other state-issued identification card;

(8) Written proof that the individual is at least twenty-one years of age.

2. A license shall not be issued to any person who has had a conviction of a felony or misdemeanor relating to sex offenses, obscenity offenses, or alcohol-related offenses in the past ten years.

67.2556. 1. For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of all counties, cities, towns, and villages is hereby empowered to regulate and restrict the location of sexually-oriented businesses in accordance with the general zoning powers granted to cities, towns, and villages under section 89.020, RSMo, counties with a charter form of government under section 64.090, RSMo, counties of the first classification under section 64.255, RSMo, counties of the second and third classification under section 64.620, RSMo, and all counties except those with a charter form of government under section 64.850, RSMo.

2. The provisions of sections 67.2540 to 67.2556 are designed to protect the following public policy interests of this state, including but

not limited to: to mitigate the adverse secondary effects of sexually-oriented businesses, to limit harm to minors, and to reduce prostitution, crime, juvenile delinquency, deterioration in property values, and lethargy in neighborhood improvement efforts.

311.488. The supervisor of the division of alcohol and tobacco control shall not issue a license to sell intoxicating liquor or nonintoxicating beer to a sexually-oriented or adult cabaret business as defined by section 67.2540, RSMo.

567.080. 1. Any room, building or other structure regularly used for sexual contact for pay as defined in section 567.010 or any unlawful prostitution activity prohibited by this chapter **or any building, place, or the ground itself, in or upon which any lewdness or assignation is conducted, permitted, continued, or exists** is a public nuisance.

2. **Any person who erects, establishes, continues, maintains, uses, owns, or leases any building or other place for the purpose of lewdness, assignation, sexual contact for pay as defined in section 567.010 or any unlawful prostitution activity prohibited by this chapter is guilty of maintaining a nuisance and on conviction shall be punished by a fine not to exceed one thousand dollars or by imprisonment in the county jail for a period not to exceed one year, or by both the fine and imprisonment.**

3. The attorney general, circuit attorney or prosecuting attorney may, in addition to all criminal sanctions, prosecute a suit in equity to enjoin the nuisance. If the court finds that **[the] any owner, lessee, sublessee, employee or agent of the owner, assignee, or partner of the owner** of the room, building **or its grounds**, or structure knew or had reason to believe that the premises were being used regularly for sexual contact for pay or unlawful prostitution activity, **or any act of lewdness or assignation**, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one year.

[3.] 4. All persons, including owners, **partners**, lessees, **sublessees**, officers, agents, inmates or employees, aiding or facilitating such a nuisance may be made defendants in any suit to enjoin the nuisance, and they may be enjoined from engaging in any sexual contact for pay or unlawful prostitution activity anywhere within the jurisdiction of the court.

[4.] 5. Appeals shall be allowed from the judgment of the court as in

other civil actions.

573.503. **1.** Notwithstanding any provision of law to the contrary, any city not within a county and any county may, by order or ordinance, require a background check be conducted on all employees of any adult cabaret to ascertain whether any such employees have been convicted of or have pled guilty to any misdemeanor or felony involving prostitution or aiding or abetting prostitution, drug possession or trafficking, money laundering, tax evasion, or illegal gambling activity.

2. If an order or ordinance is created that requires employees of an adult cabaret to complete a background check under subsection 1 of this section, a violation of such an order or ordinance shall be a class B misdemeanor.

Section B. If any provision of sections 67.2540 to 67.2556 and section 567.080 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.

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