

FIRST REGULAR SESSION

# SENATE BILL NO. 32

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0099S.03I

## AN ACT

To repeal sections 567.080 and 573.503, RSMo, and to enact in lieu thereof twelve 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Section A. Sections 567.080 and 573.503, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 67.2540, 67.2542, 67.2544, 67.2546, 67.2548, 67.2550, 67.2552, 67.2554, 67.2556,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 arcade", any place to which the public is permitted or invited where coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas;

(2) "Adult bookstore", "adult novelty store", or "adult video store", a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representatives characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

(b) Instruments, devices, or paraphernalia designed for use in connection with specified sexual activities.

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

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas, and be defined as an adult bookstore, adult novelty store, or adult video store. Such other business purposes shall not serve to exempt such commercial establishments from being defined as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(3) "Adult cabaret", a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

(a) Persons who appear in a state of nudity or semi-nude; or

(b) Live performances characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(c) Films, motion pictures, video cassettes, DVDs, slides or other photographic reproductions characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(4) "Adult motel", a hotel, motel, or similar commercial establishment that:

(a) Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, DVDs, slides, or other photographic reproductions characterized by the depiction or description of specified sexual activities or specified anatomical areas, and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions; or

(b) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours;

(5) "Adult motion picture theater", a commercial establishment where, for any form of consideration, a majority of the films, motion pictures, video cassettes, DVDs, slides, or similar photographic reproductions regularly shown to customers are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(6) "Adult theater", a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nude, or live performances characterized by the exposure of specified anatomical areas or specified sexual activities;

(7) "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 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 the premises, or for the delivery of goods to the premises;

(8) "Escort", a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person;

(9) "Escort agency", a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration;

(10) "Establishment", includes any of the following actions:

(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;

(c) The additions of any sexually oriented business to any other existing sexually oriented business; or

(d) The relocation of any sexually oriented business;

(11) "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;

(12) "Nude model studio", any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas, and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by another person who pays money or any form of consideration. A nude model studio shall not include a proprietary school licensed by the state of Missouri or a college, junior college, or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or a structure:

(a) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or 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; and

(c) Where no more than one nude or semi-nude model is on the premises at any one time;

(13) "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;

(14) "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 films, 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;

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

(16) "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. Seminudity 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;

(17) "Sexual encounter center", a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) Activities between male and female persons or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude;

(18) "Sexually oriented business", an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center;

(19) "Specified anatomical areas":

(a) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

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

(20) "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; or distribution of a controlled substance; or any similar offenses to those described in this subsection 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;

(21) "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 subsection;

(22) "Substantial enlargement", the increase in floor areas occupied by a sexually oriented business by more than twenty-five percent, as its floor areas exist on August 25, 2005;

(23) "Transfer of ownership or control", includes the following actions:

(a) The sale, lease, or sublease of a sexually oriented business;

(b) The transfer of securities constituting a controlling interest in a sexually oriented business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of a sexually oriented business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

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.

67.2544. 1. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel.

2. A person is guilty of a class A misdemeanor if, as the person is in control of a sleeping room in a hotel, motel, or similar commercial establishment, he or she rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, he or she rents or subrents the same sleeping room again. The

provisions of this section do not apply if a hotel, motel, or similar commercial establishment is licensed in accordance with section 67.2554.

3. For the purposes of this section, the terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

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

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. An escort agency shall not employ any person who is not yet twenty-one years of age.

2. A person is guilty of a class A misdemeanor if the person acts as an escort or agrees to act as an escort for any person under the age of twenty-one.

67.2550. 1. A nude model studio shall not employ any person who is not yet twenty-one years of age.

2. A person under the age of eighteen years shall be adjudicated for an offense that would be a class A misdemeanor if that person was an adult, if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to adjudication or prosecution under this section if the person was in a restroom not open to public view or visible to any other person or was a minor under the age of sixteen and is thus presumed to be unable to consent, as defined by section 556.061, RSMo, to participating in nude modeling because of his or her youth. A person eighteen years of age or older shall be guilty of a class A misdemeanor for committing such an offense.

3. A person is guilty of a class A misdemeanor if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity, in an area of a nude model studio premises that can be viewed from the public right-of-way.

4. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

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.

2. It shall be a class A misdemeanor for a person to appear knowingly or intentionally in a sexually oriented business 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, except for an adult motel, 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 holidays and Sundays.

67.2554. 1. Any county, city, town, or village may create an ordinance requiring sexually oriented businesses 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 five 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 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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