

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 223 & 226
95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 12, 2009, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1331S.03C

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
2 sections, to be known as sections 573.525, 573.528, 573.531, 573.534, 573.537, and
3 573.540, to read as follows:

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

16 2. The general assembly finds that:

17 (1) Sexually oriented businesses, as a category of commercial
18 enterprises, are associated with a wide variety of adverse secondary
19 effects, including but not limited to personal and property crimes,

20 prostitution, potential spread of disease, lewdness, public indecency,
21 obscenity, illicit drug use and drug trafficking, negative impacts on
22 surrounding properties, urban blight, litter, and sexual assault and
23 exploitation;

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

30 (3) Each of the foregoing negative secondary effects constitutes
31 a harm which the state has a substantial interest in preventing or
32 abating, or both. Such substantial government interest in preventing
33 secondary effects, which is the state's rationale for sections 573.525 to
34 573.537, exists independent of any comparative analysis between
35 sexually oriented and nonsexually oriented businesses. Additionally,
36 the state's interest in regulating sexually oriented businesses extends
37 to preventing future secondary effects of current or future sexually
38 oriented businesses that may locate in the state.

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

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

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

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

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

18 (d) Derives a substantial portion of its revenues from the sale or

19 rental, for any form of consideration, of such items; or

20 (e) Maintains a substantial section of its interior business space
21 for the sale or rental of such items; or

22 (f) Maintains an adult arcade. "Adult arcade" means any place to
23 which the public is permitted or invited wherein coin-operated or slug-
24 operated or electronically, electrically, or mechanically controlled still
25 or motion picture machines, projectors, or other image-producing
26 devices are regularly maintained to show images to five or fewer
27 persons per machine at any one time, and where the images so
28 displayed are characterized by their emphasis upon matter exhibiting
29 specified sexual activities or specified anatomical areas;

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

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

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

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

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

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

55 (b) The conversion of an existing business, whether or not a

56 sexually oriented business, to any sexually oriented business; or

57 (c) The addition of any sexually oriented business to any other
58 existing sexually oriented business;

59 (7) "Influential interest", any of the following:

60 (a) The actual power to operate the sexually oriented business
61 or control the operation, management, or policies of the sexually
62 oriented business or legal entity which operates the sexually oriented
63 business;

64 (b) Ownership of a financial interest of thirty percent or more
65 of a business or of any class of voting securities of a business; or

66 (c) Holding an office, such as president, vice president, secretary,
67 treasurer, managing member, or managing director, in a legal entity
68 which operates the sexually oriented business;

69 (8) "Nudity" or "state of nudity", the showing of the human male
70 or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with
71 less than a fully opaque covering, or the showing of the female breast
72 with less than a fully opaque covering of any part of the nipple or
73 areola;

74 (9) "Operator", any person on the premises of a sexually oriented
75 business who causes the business to function or who puts or keeps in
76 operation the business or who is authorized to manage the business or
77 exercise overall operational control of the business premises. A person
78 may be found to be operating or causing to be operated a sexually
79 oriented business whether or not such person is an owner, part owner,
80 or licensee of the business;

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

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

90 (12) "Semi-nude" or "state of semi-nudity", the showing of the
91 female breast below a horizontal line across the top of the areola and
92 extending across the width of the breast at such point, or the showing

93 of the male or female buttocks. Such definition includes the lower
94 portion of the human female breast, but shall not include any portion
95 of the cleavage of the human female breasts exhibited by a bikini,
96 dress, blouse, shirt, leotard, or similar wearing apparel provided the
97 areola is not exposed in whole or in part;

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

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

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

110 (c) In a structure:

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

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

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

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

124 (16) "Specified anatomical areas":

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

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

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

134 (a) Rape and sexual assault offenses;

135 (b) Sexual offenses involving minors;

136 (c) Offenses involving prostitution;

137 (d) Obscenity offenses;

138 (e) Offenses involving money laundering;

139 (f) Offenses involving tax evasion;

140 (g) Any attempt, solicitation, or conspiracy to commit one of the
141 offenses listed in paragraphs (a) to (f) of this subdivision; or

142 (h) Any offense committed in another jurisdiction which if
143 committed in this state would have constituted an offense listed in
144 paragraphs (a) to (g) of this subdivision;

145 (18) "Specified sexual activity", any of the following:

146 (a) Intercourse, oral copulation, masturbation, or sodomy; or

147 (b) Excretory functions as a part of or in connection with any of
148 the activities describe in paragraph (a) of this subdivision;

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

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

573.531. 1. No person shall establish a sexually oriented business
2 within one thousand feet of any preexisting primary or secondary
3 school, house of worship, state-licensed day care facility, public library,
4 public park, residence, or other sexually oriented business. This
5 subsection shall not apply to any sexually oriented business lawfully
6 established prior to the effective date of sections 573.525 to
7 573.537. For purposes of this subsection, measurements shall be made
8 in a straight line, without regard to intervening structures or objects,
9 from the closest portion of the parcel containing the sexually oriented
10 business to the closest portion of the parcel containing the preexisting
11 primary or secondary school, house of worship, state-licensed day care
12 facility, public library, public park, residence, or other sexually

13 **oriented business.**

14 **2. No person shall establish a sexually oriented business if a**
15 **person with an influential interest in the sexually oriented business has**
16 **been convicted of or pled guilty or nolo contendere to a specified**
17 **criminal act.**

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

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

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

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

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

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

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

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

48 **(5) It is the duty of the operator to ensure that at least one**
49 **employee is on duty and situated in an operator's station at all times**

50 that any patron is on the portion of the premises monitored by such
51 operator station; and

52 (6) It shall be the duty of the operator and of any employees
53 present on the premises to ensure that the view area specified in this
54 subsection remains unobstructed by any doors, curtains, walls,
55 merchandise, display racks, or other materials or enclosures at all
56 times that any patron is present on the premises.

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

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

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

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

573.534. Sections 573.525 to 573.537 do not impose strict
2 liability. Unless a culpable mental state is otherwise specified herein,
3 a showing of a knowing or reckless mental state is necessary to
4 establish a violation of sections 573.525 to 573.537. Notwithstanding
5 any other provision of law to the contrary, for purposes of sections
6 573.525 to 573.537, an act by an employee shall be imputed to the
7 sexually oriented business for purposes of finding a violation of
8 sections 573.525 to 573.537 only if an officer, director, or general
9 partner, or a person who managed, supervised, or controlled the
10 operation of the business premises knowingly or recklessly allowed
11 such act to occur on the premises. It shall be a defense to liability that
12 the person to whom liability is imputed was powerless to prevent the
13 act.

573.537. 1. Any person, business, or entity violating or refusing

2 to comply with any provision of sections 573.525 to 573.537 shall, upon
3 conviction, be deemed guilty of a misdemeanor and shall be punished
4 by imposition of a fine not to exceed five hundred dollars or by
5 imprisonment for a period not to exceed ninety days, or both. Each day
6 that a violation is permitted to exist or occur, and each separate
7 occurrence shall constitute a separate offense.

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

15 3. Notwithstanding the provisions of this section, the state may
16 employ any remedy available at law or in equity to prevent or remedy
17 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
2 prevent any political subdivision in this state from maintaining,
3 enacting, or enforcing any local ordinance, rule, regulation, resolution,
4 or similar law concerning the regulation of sexually oriented
5 businesses or similar adult oriented businesses.

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

Copy ✓