

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 586 & 617

95TH GENERAL ASSEMBLY

2010

3570L.06T

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.

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;

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

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

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

52 **(b) The conversion of an existing business, whether or not a
53 sexually oriented business, to any sexually oriented business; or**

54 **(c) The addition of any sexually oriented business to any other
55 existing sexually oriented business;**

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

57 **(a) The actual power to operate the sexually oriented business
58 or control the operation, management, or policies of the sexually
59 oriented business or legal entity which operates the sexually oriented
60 business;**

61 **(b) Ownership of a financial interest of thirty percent or more
62 of a business or of any class of voting securities of a business; or**

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

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

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

78 **(10) "Premises", the real property upon which the sexually
79 oriented business is located, and all appurtenances thereto and
80 buildings thereon, including but not limited to the sexually oriented
81 business, the grounds, private walkways, and parking lots or parking
82 garages or both;**

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

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

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

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

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

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

105 (c) In a structure:

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

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

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

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

119 (16) "Specified anatomical areas":

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

123 (b) Human male genitals in a discernibly turgid state, even if

124 completely and opaquely covered;

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

129 (a) Rape and sexual assault offenses;

130 (b) Sexual offenses involving minors;

131 (c) Offenses involving prostitution;

132 (d) Obscenity offenses;

133 (e) Offenses involving money laundering;

134 (f) Offenses involving tax evasion;

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

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

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

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

142 (b) Excretory functions as a part of or in connection with any of
143 the activities described in paragraph (a) of this subdivision;

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

146 (20) "Viewing room", the room, booth, or area where a patron of
147 a sexually oriented business would ordinarily be positioned while
148 watching a film, video cassette, digital video disc, or other video
149 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.

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.

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. 1. Nothing in sections 573.525 to 573.537 shall be
2 construed as preempting or preventing any political subdivision of this
3 state from maintaining, enacting, or enforcing any local ordinance,
4 rule, regulation, resolution, or similar law concerning the regulation of
5 sexually oriented businesses or similar adult oriented businesses which
6 is stricter than but not inconsistent with the provisions of sections
7 573.525 to 573.537.

2. Political subdivisions of this state are specifically authorized
9 to maintain, enact, and enforce local ordinances, rules, regulations,
10 resolutions, or other similar laws concerning the regulation of sexually
11 oriented businesses or similar adult oriented businesses which are the
12 same as or stricter than but not inconsistent with the provisions of
13 sections 573.525 to 573.537.

Section B. If any provision of sections 573.525 to 573.540 of section A of
2 this act or the application thereof to anyone or to any circumstances is held
3 invalid, the remainder of those sections and the application of such provisions to

4 others or other circumstances shall not be affected thereby.

✓

Unofficial

Bill

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