

SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILLS NOS. 1164 & 1476  
AN ACT

To repeal sections 67.2540, 226.531, and 573.010, RSMo, and to enact in lieu thereof five new sections relating to adult cabaret performances, with penalty provisions.

---

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

Section A. Sections 67.2540, 226.531, and 573.010, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 67.2540, 226.531, 537.048, 573.010, and 573.520, to read as follows: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 regularly appear in a state of nudity[, as defined in section 573.500,] or seminudity in the performance of their duties;

(2) "Adult cabaret performance", a performance that appeals to a prurient interest in a location other than an adult cabaret that features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators who provide entertainment, or similar entertainers, regardless of whether performed for consideration;

(3) "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;

[(3)] (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;

[(4)] (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 films designed to be projected for exhibition, 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;

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

[(6)] (7) "Seminude" or in a "seminude 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;

[(7)] (8) "Sexually oriented business", an adult cabaret [or], any business which offers its patrons goods of which a substantial or significant portion are sexually oriented material, or any business other than an adult cabaret that offers an adult cabaret performance. It shall be presumed that a business that derives thirty percent or less of its revenue from sexually oriented materials is presumed not to be a sexually oriented business. [No] A building, premises, structure, or other facility that contains any sexually oriented business shall not contain any other kind of sexually oriented business, except that of an adult cabaret performance;

[(8)] (9) "Sexually oriented materials", any 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, as defined in section 573.010;

[(9)] (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 not prevent a sexually oriented business from being considered a nuisance and closed under section 67.2546;

[(10)] (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.

226.531. 1. As used in this section 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] 573.010, or seminudity, in the performance of their duties;

(2) "Adult cabaret performance", a performance that appeals to a prurient interest in a location other than an adult cabaret that features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators who

provide entertainment, or similar entertainers, regardless of whether performed for consideration;

(3) "Seminudity", 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;

~~[(3)]~~ (4) "Sexually oriented business", any business which offers its patrons goods of which a substantial portion are sexually oriented materials or any business other than an adult cabaret that offers an adult cabaret performance. 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;

~~[(4)]~~ (5) "Sexually oriented materials", any textual, pictorial, or three-dimensional material 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.

2. No billboard or other exterior advertising sign for an adult cabaret or sexually oriented business shall be located within one mile of any state highway except if such business is located within one mile of a state highway then the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that the premises are off limits to minors. The identification sign shall be no more than forty square feet in size and

shall include no more than the following information: name, street address, telephone number, and operating hours of the business.

3. Signs existing on August 28, 2004, which did not conform to the requirements of this section, may be allowed to continue as a nonconforming use, but should be made to conform within three years from August 28, 2004.

4. Any owner of such a business who violates the provisions of this section shall be guilty of a class C misdemeanor. Each week a violation of this section continues to exist shall constitute a separate offense.

5. This section is 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 improve traffic safety, to limit harm to minors, and to reduce prostitution, crime, juvenile delinquency, deterioration in property values, and lethargy in neighborhood improvement efforts.

537.048. 1. As used in this section, the following terms mean:

(1) "Actions or materials that appeal to a prurient interest in sex", actions or materials that are characterized by, fixate on, depict, or exhibit sex, sexually explicit content, sexual desire, a state of nudity or state of seminudity, or obscene or pornographic material;

(2) "Adult cabaret establishment", a nightclub, bar, restaurant, or similar establishment in which persons regularly appear in a state of nudity or a state of seminudity in the performance of their duties;

(3) "Adult cabaret performance", a performance in a location, other than an adult cabaret establishment, by an adult cabaret performer and which contains actions or materials that appeal to a prurient interest in sex;

(4) "Adult cabaret performer", an entertainer who provided an adult cabaret performance, including, but not limited to, a topless dancer, go-go dancer, exotic dancer, stripper, or male or female impersonator;

(5) "State of nudity", the showing of the human genitals, pubic area, vulva, anus, anal cleft, or female breast less than a fully opaque covering of any part of the nipple or areola;

(6) "State of seminudity", a state of dress in which opaque clothing fails to cover the human genitals, pubic area, vulva, anus, anal cleft, nipple and areola of the female breast below a horizontal line across the top of the areola at its highest point and extending across the width of the breast at such point, or the showing of the buttocks. The term "state of 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.

2. Any person who is a resident of the city, town, or village where an adult cabaret performance is conducted shall have a cause of action for damages or relief, as specified in subsection 3 of this section, against an adult cabaret performer whose adult cabaret performance, proven by a preponderance of the evidence, contains actions or material that appeal to a prurient interest in sex and that occur:

(1) On public property; or

(2) In a location where the adult cabaret performance could be viewed by a person who is under the age of eighteen.

3. A court may award any damages or injunctive relief as it deems necessary, including any actual damages, punitive damages, and reasonable attorney's fees, to a

prevailing plaintiff, except no damages, apart from nominal damages, shall be awarded in more than one action arising out of a single occurrence.

4. Any action pursuant to subsection 2 of this section shall be brought in the circuit court of the county where the adult cabaret performance occurred. Any person entitled to bring an action pursuant to subsection 2 of this section may institute an action as a representative of a class against one or more defendants.

573.010. As used in this chapter the following terms shall mean:

(1) "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;

(2) "Adult cabaret performance", a performance that appeals to a prurient interest in a location other than an adult cabaret that features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators who provide entertainment, or similar entertainers, regardless of whether performed for consideration;

(3) "Characterized by", describing the essential character or dominant theme of an item;

[(3)] (4) "Child", any person under the age of fourteen;

[(4)] (5) "Child pornography":

(a) Any obscene material or performance depicting sexual conduct, sexual contact as defined in section 566.010, or a sexual performance and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor; or

(b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated

image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct; or

c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct. "Identifiable minor" means a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature. The term identifiable minor shall not be construed to require proof of the actual identity of the identifiable minor;

[(5)] (6) "Employ", "employee", or "employment", 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)] (7) "Explicit sexual material", any pictorial or three-dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

[(7)] (8) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;

[(8)] (9) "Material", anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;

[(9)] (10) "Minor", any person less than eighteen years of age;

[(10)] (11) "Nudity" or "state of nudity", the showing of the human genitals, pubic area, vulva, anus, anal cleft, or the female breast with less than a fully opaque covering of any part of the nipple or areola;

[(11)] (12) "Obscene", any material or performance if, taken as a whole:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and

(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;

[(12)] (13) "Operator", any person on the premises of a sexually oriented business who causes the business to function, puts or keeps the business in operation, or 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;

[(13)] (14) "Performance", any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;

[(14)] (15) "Pornographic for minors", any material or performance if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, the condition of human genitals when in a state of sexual stimulation or arousal, 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; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

[(15)] (16) "Premises", the real property upon which a 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;

[(16)] (17) "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;

[(17)] (18) "Regularly", the consistent and repeated doing of the act so described;

[(18)] (19) "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

[(19)] (20) "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 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;

[(20)] (21) "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

[(21)] (22) "Sexually explicit conduct", actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) Bestiality;

- (c) Masturbation;
- (d) Sadistic or masochistic abuse; or
- (e) Lascivious exhibition of the genitals or pubic area of any person;

[(22)] (23) "Sexually oriented business" includes:

(a) An adult bookstore or adult video store. "Adult bookstore" or "adult video store" means 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;

(b) An adult cabaret;

(c) An adult motion picture theater. "Adult motion picture theater" means 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;

(d) A semi-nude model studio. "Semi-nude model studio" means 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:

(i) 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

(ii) Where, in order to participate in a class, a student must enroll at least three days in advance of the class;

(e) A sexual encounter center. "Sexual encounter center" means 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 two or more persons when one or more of the persons is semi-nude; or

(f) Any business other than an adult cabaret that offers an adult cabaret performance;

[(23)] (24) "Sexual performance", any performance, or part thereof, which includes sexual conduct by a child who is less than eighteen years of age;

[(24)] (25) "Specified anatomical areas" include:

(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;

[(25)] (26) "Specified sexual activity", includes 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 described in paragraph (a) of this subdivision;

[(26)] (27) "Substantial", at least thirty percent of the item or items so modified;

[(27)] (28) "Visual depiction", includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

573.520. 1. A person commits the offense of engaging in an adult cabaret performance if such performance is:

(1) On public property; or

(2) In a location other than an adult cabaret where the adult cabaret performance is reasonably expected to be viewed by a person who is not an adult.

2. The offense of engaging in an adult cabaret performance is a class A misdemeanor for a first offense and a class E felony for any second or subsequent offense.

3. The provisions of this section shall:

(1) Preempt an ordinance or a regulation, restriction, or license that was lawfully adopted or issued by a political subdivision prior to August 28, 2026, if such ordinance, regulation, restriction, or license conflicts with this section; and

(2) Prevent or preempt a political subdivision from enacting and enforcing in the future other ordinances, regulations, restrictions, or licenses that are in conflict with this section.