

SENATE BILL NO. 1164

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

5210S.02I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 573.010, RSMo, and to enact in lieu thereof three new sections relating to judicial proceedings, with penalty provisions.

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

Section A. Section 573.010, RSMo, is repealed and three
2 new sections enacted in lieu thereof, to be known as sections
3 537.048, 573.010, and 573.520, to read as follows:

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

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

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

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

16 (4) "Adult cabaret performer", an entertainer who
17 provided an adult cabaret performance, including, but not

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

18 limited to, a topless dancer, go-go dancer, exotic dancer,
19 stripper, or male or female impersonator;

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

24 (6) "State of seminudity", a state of dress in which
25 opaque clothing fails to cover the human genitals, pubic
26 area, vulva, anus, anal cleft, nipple and areola of the
27 female breast below a horizontal line across the top of the
28 areola at its highest point and extending across the width
29 of the breast at such point, or the showing of the
30 buttocks. The term "state of seminudity" shall include the
31 entire lower portion of the female breast, but shall not
32 include any portion of the cleavage of the human female
33 breast exhibited by wearing apparel provided the areola is
34 not exposed in whole or part.

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

43 (1) On public property; or

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

46 3. A court may award any damages or injunctive relief
47 as it deems necessary, including any actual damages,
48 punitive damages, and reasonable attorney's fees, to a
49 prevailing plaintiff, except no damages, apart from nominal

50 damages, shall be awarded in more than one action arising
51 out of a single occurrence.

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

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

3 (1) "Adult cabaret", a nightclub, bar, juice bar,
4 restaurant, bottle club, or other commercial establishment,
5 regardless of whether alcoholic beverages are served, which
6 regularly features persons who appear semi-nude;

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

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

16 [(3)] (4) "Child", any person under the age of
17 fourteen;

18 [(4)] (5) "Child pornography":

19 (a) Any obscene material or performance depicting
20 sexual conduct, sexual contact as defined in section
21 566.010, or a sexual performance and which has as one of its
22 participants or portrays as an observer of such conduct,
23 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

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

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

93 [(12)] (13) "Operator", any person on the premises of
94 a sexually oriented business who causes the business to
95 function, puts or keeps the business in operation, or is
96 authorized to manage the business or exercise overall
97 operational control of the business premises. A person may
98 be found to be operating or causing to be operated a
99 sexually oriented business whether or not such person is an
100 owner, part owner, or licensee of the business;

101 [(13)] (14) "Performance", any play, motion picture
102 film, videotape, dance or exhibition performed before an
103 audience of one or more;

104 [(14)] (15) "Pornographic for minors", any material or
105 performance if the following apply:

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

110 (b) The material or performance depicts or describes
111 nudity, sexual conduct, the condition of human genitals when
112 in a state of sexual stimulation or arousal, or
113 sadomasochistic abuse in a way which is patently offensive
114 to the average person applying contemporary adult community
115 standards with respect to what is suitable for minors; and

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

119 [(15)] (16) "Premises", the real property upon which a
120 sexually oriented business is located, and all appurtenances
121 thereto and buildings thereon, including but not limited to
122 the sexually oriented business, the grounds, private
123 walkways, and parking lots or parking garages or both;

124 [(16)] (17) "Promote", to manufacture, issue, sell,
125 provide, mail, deliver, transfer, transmute, publish,
126 distribute, circulate, disseminate, present, exhibit, or
127 advertise, or to offer or agree to do the same, by any means
128 including a computer;

129 [(17)] (18) "Regularly", the consistent and repeated
130 doing of the act so described;

131 [(18)] (19) "Sadomasochistic abuse", flagellation or
132 torture by or upon a person as an act of sexual stimulation
133 or gratification;

134 [(19)] (20) "Semi-nude" or "state of semi-nudity", the
135 showing of the female breast below a horizontal line across
136 the top of the areola and extending across the width of the
137 breast at such point, or the showing of the male or female
138 buttocks. Such definition includes the lower portion of the
139 human female breast, but shall not include any portion of
140 the cleavage of the female breasts exhibited by a bikini,
141 dress, blouse, shirt, leotard, or similar wearing apparel
142 provided the areola is not exposed in whole or in part;

143 [(20)] (21) "Sexual conduct", actual or simulated,
144 normal or perverted acts of human masturbation; deviate
145 sexual intercourse; sexual intercourse; or physical contact
146 with a person's clothed or unclothed genitals, pubic area,
147 buttocks, or the breast of a female in an act of apparent
148 sexual stimulation or gratification or any sadomasochistic
149 abuse or acts including animals or any latent objects in an
150 act of apparent sexual stimulation or gratification;

151 [(21)] (22) "Sexually explicit conduct", actual or
152 simulated:

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

156 (b) Bestiality;

157 (c) Masturbation;

158 (d) Sadistic or masochistic abuse; or

159 (e) Lascivious exhibition of the genitals or pubic
160 area of any person;

161 [(22)] (23) "Sexually oriented business" includes:

162 (a) An adult bookstore or adult video store. "Adult
163 bookstore" or "adult video store" means a commercial
164 establishment which, as one of its principal business
165 activities, offers for sale or rental for any form of
166 consideration any one or more of the following: books,
167 magazines, periodicals, or other printed matter, or
168 photographs, films, motion pictures, video cassettes,
169 compact discs, digital video discs, slides, or other visual
170 representations which are characterized by their emphasis
171 upon the display of specified sexual activities or specified
172 anatomical areas. A principal business activity exists
173 where the commercial establishment:

174 a. Has a substantial portion of its displayed
175 merchandise which consists of such items; or

176 b. Has a substantial portion of the wholesale value of
177 its displayed merchandise which consists of such items; or

178 c. Has a substantial portion of the retail value of
179 its displayed merchandise which consists of such items; or

180 d. Derives a substantial portion of its revenues from
181 the sale or rental, for any form of consideration, of such
182 items; or

183 e. Maintains a substantial section of its interior
184 business space for the sale or rental of such items; or

185 f. Maintains an adult arcade. "Adult arcade" means
186 any place to which the public is permitted or invited
187 wherein coin-operated or slug-operated or electronically,
188 electrically, or mechanically controlled still or motion
189 picture machines, projectors, or other image-producing
190 devices are regularly maintained to show images to five or
191 fewer persons per machine at any one time, and where the
192 images so displayed are characterized by their emphasis upon
193 matter exhibiting specified sexual activities or specified
194 anatomical areas;

195 (b) An adult cabaret;

196 (c) An adult motion picture theater. "Adult motion
197 picture theater" means a commercial establishment where
198 films, motion pictures, video cassettes, slides, or similar
199 photographic reproductions, which are characterized by their
200 emphasis upon the display of specified sexual activities or
201 specified anatomical areas are regularly shown to more than
202 five persons for any form of consideration;

203 (d) A semi-nude model studio. "Semi-nude model
204 studio" means a place where persons regularly appear in a
205 state of semi-nudity for money or any form of consideration
206 in order to be observed, sketched, drawn, painted,
207 sculptured, photographed, or similarly depicted by other
208 persons. Such definition shall not apply to any place where
209 persons appearing in a state of semi-nudity do so in a
210 modeling class operated:

211 a. By a college, junior college, or university
212 supported entirely or partly by taxation;

213 b. By a private college or university which maintains
214 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;

[(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;

246 [(26)] (27) "Substantial", at least thirty percent of
247 the item or items so modified;

248 [(27)] (28) "Visual depiction", includes undeveloped
249 film and videotape, and data stored on computer disk or by
250 electronic means which is capable of conversion into a
251 visual image.

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

3 (1) On public property; or

4 (2) In a location where the adult cabaret performance
5 could be viewed by a person who is not an adult.

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

9 3. The provisions of this section shall:

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

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

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