

SENATE BILL NO. 1476

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NICOLA.

6066S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 67.2540, 226.531, and 573.010, RSMo, and to enact in lieu thereof four 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,
2 are repealed and four new sections enacted in lieu thereof, to
3 be known as sections 67.2540, 226.531, 573.010, and 573.520, to
4 read as follows:

67.2540. As used in sections 67.2540 to 67.2556, the
2 following terms mean:

3 (1) "Adult cabaret", a nightclub, bar, restaurant, or
4 similar establishment in which persons regularly appear in a
5 state of nudity[, as defined in section 573.500,] or
6 seminudity in the performance of their duties;

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

13 (3) "Employee", a person who is at least twenty-one
14 years of age and who performs any service on the premises of
15 a sexually oriented business on a full-time, part-time, or
16 contract basis, whether or not the person is denominated an

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

17 employee, independent contractor, agent, or otherwise, and
18 whether or not said person is paid a salary, wage, or other
19 compensation by the operator of said business. The term
20 employee does not include a person exclusively on the
21 premises for repair or maintenance of the premises or
22 equipment on the premises, or for the delivery of goods to
23 the premises;

24 [(3)] (4) "Nudity" or a "state of nudity", the showing
25 of the human male or female genitals, pubic area, vulva,
26 anus, anal cleft or anal cleavage with less than a fully
27 opaque covering, the showing of the female breast with less
28 than a fully opaque covering of any part of the nipple, or
29 the showing of the covered male genitals in a discernibly
30 turgid state;

31 [(4)] (5) "Nuisance", any place in or upon which
32 lewdness, assignation, or prostitution is conducted,
33 permitted, continued, or exists, or any place, in or upon
34 which lewd, indecent, lascivious, or obscene films, or films
35 designed to be projected for exhibition, are photographed,
36 manufactured, developed, screened, exhibited, or otherwise
37 prepared or shown, and the personal property and contents
38 used in conducting and maintaining any such place for any
39 such purpose. The provisions of this section shall not
40 affect any newspaper, magazine, or other publication entered
41 as second class matter by the post office department;

42 [(5)] (6) "Person", an individual, proprietorship,
43 partnership, corporation, association, or other legal entity;

44 [(6)] (7) "Seminude" or in a "seminude condition", a
45 state of dress in which opaque clothing fails to cover the
46 genitals, anus, anal cleft or cleavage, pubic area, vulva,
47 nipple and areola of the female breast below a horizontal
48 line across the top of the areola at its highest point.

49 Seminudity shall include the entire lower portion of the
50 female breast, but shall not include any portion of the
51 cleavage of the human female breast exhibited by wearing
52 apparel provided the areola is not exposed in whole or part;

53 [(7)] (8) "Sexually oriented business", an adult
54 cabaret [or], any business which offers its patrons goods of
55 which a substantial or significant portion are sexually
56 oriented material, **or any business other than an adult**
57 **cabaret that offers an adult cabaret performance.** It shall
58 be presumed that a business that derives thirty percent or
59 less of its revenue from sexually oriented materials is
60 presumed not to be a sexually oriented business. [No] A
61 building, premises, structure, or other facility that
62 contains any sexually oriented business shall **not** contain
63 any other kind of sexually oriented business, **except that of**
64 **an adult cabaret performance;**

65 [(8)] (9) "Sexually oriented materials", any pictorial
66 or three-dimensional material, or film, motion picture, DVD,
67 video cassette, or similar photographic reproduction, that
68 depicts nudity, sexual conduct, sexual excitement, or
69 sadomasochistic abuse, as defined in section 573.010;

70 [(9)] (10) "Specified criminal activity" includes the
71 following offenses:

72 (a) Prostitution or promotion of prostitution;
73 dissemination of obscenity; sale, distribution, or display
74 of harmful material to a minor; sexual performance by a
75 child; possession or distribution of child pornography;
76 public lewdness; indecent exposure; indecency with a child;
77 engaging in organized criminal activity; sexual assault;
78 molestation of a child; gambling prohibited under Missouri
79 law; or distribution of a controlled substance; or any

80 similar offenses described in this subdivision under the
81 criminal or penal code of other states or countries;

82 (b) For which:

83 a. Less than two years have elapsed since the date of
84 conviction or the date of release from confinement imposed
85 for the conviction, whichever is the later date, if the
86 conviction is of a misdemeanor offense;

87 b. Less than five years have elapsed since the date of
88 conviction or the date of release from confinement for the
89 conviction, whichever is the later date, if the conviction
90 is of a felony offense; or

91 c. Less than five years have elapsed since the date of
92 the last conviction or the date of release from confinement
93 for the last conviction, whichever is the later date, if the
94 convictions are of two or more misdemeanor offenses or
95 combination of misdemeanor offenses occurring within any
96 twenty-four-month period;

97 (c) The fact that a conviction is being appealed shall
98 not prevent a sexually oriented business from being
99 considered a nuisance and closed under section 67.2546;

100 [(10)] (11) "Specified sexual activities" includes the
101 following acts:

102 (a) The fondling or other erotic touching of human
103 genitals, pubic region, buttocks, anus, or female breasts;

104 (b) Sex acts, actual or simulated, including
105 intercourse, oral copulation, masturbation, or sodomy; or

106 (c) Excretory functions as part of or in connection
107 with any of the activities set forth in this subdivision.

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

3 (1) "Adult cabaret", a nightclub, bar, restaurant, or
4 similar establishment in which persons appear in a state of

5 nudity, as defined in section [573.500] **573.010**, or
6 seminudity, in the performance of their duties;

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

13 (3) "Seminudity", a state of dress in which opaque
14 clothing fails to cover the genitals, anus, anal cleft or
15 cleavage, pubic area, vulva, nipple and areola of the female
16 breast below a horizontal line across the top of the areola
17 at its highest point. Seminudity shall include the entire
18 lower portion of the female breast, but shall not include
19 any portion of the cleavage of the human female breast
20 exhibited by wearing apparel provided the areola is not
21 exposed in whole or part;

22 [(3)] (4) "Sexually oriented business", any business
23 which offers its patrons goods of which a substantial
24 portion are sexually oriented materials **or any business**
25 **other than an adult cabaret that offers an adult cabaret**
26 **performance.** Any business where more than ten percent of
27 display space is used for sexually oriented materials shall
28 be presumed to be a sexually oriented business;

29 [(4)] (5) "Sexually oriented materials", any textual,
30 pictorial, or three-dimensional material that depicts
31 nudity, sexual conduct, sexual excitement, or
32 sadomasochistic abuse in a way which is patently offensive
33 to the average person applying contemporary adult community
34 standards with respect to what is suitable for minors.

35 2. No billboard or other exterior advertising sign for
36 an adult cabaret or sexually oriented business shall be

37 located within one mile of any state highway except if such
38 business is located within one mile of a state highway then
39 the business may display a maximum of two exterior signs on
40 the premises of the business, consisting of one
41 identification sign and one sign solely giving notice that
42 the premises are off limits to minors. The identification
43 sign shall be no more than forty square feet in size and
44 shall include no more than the following information: name,
45 street address, telephone number, and operating hours of the
46 business.

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

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

55 5. This section is designed to protect the following
56 public policy interests of this state, including but not
57 limited to: to mitigate the adverse secondary effects of
58 sexually oriented businesses, to improve traffic safety, to
59 limit harm to minors, and to reduce prostitution, crime,
60 juvenile delinquency, deterioration in property values, and
61 lethargy in neighborhood improvement efforts.

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;

(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

39 sexually explicit conduct. "Identifiable minor" means a
40 person who was a minor at the time the visual depiction was
41 created, adapted, or modified; or whose image as a minor was
42 used in creating, adapting, or modifying the visual
43 depiction; and who is recognizable as an actual person by
44 the person's face, likeness, or other distinguishing
45 characteristic, such as a unique birthmark or other
46 recognizable feature. The term identifiable minor shall not
47 be construed to require proof of the actual identity of the
48 identifiable minor;

49 [(5)] (6) "Employ", "employee", or "employment", any
50 person who performs any service on the premises of a
51 sexually oriented business, on a full-time, part-time, or
52 contract basis, whether or not the person is denominated an
53 employee, independent contractor, agent, or otherwise.
54 Employee does not include a person exclusively on the
55 premises for repair or maintenance of the premises or for
56 the delivery of goods to the premises;

57 [(6)] (7) "Explicit sexual material", any pictorial or
58 three-dimensional material depicting human masturbation,
59 deviate sexual intercourse, sexual intercourse, direct
60 physical stimulation or unclothed genitals, sadomasochistic
61 abuse, or emphasizing the depiction of postpubertal human
62 genitals; provided, however, that works of art or of
63 anthropological significance shall not be deemed to be
64 within the foregoing definition;

65 [(7)] (8) "Furnish", to issue, sell, give, provide,
66 lend, mail, deliver, transfer, circulate, disseminate,
67 present, exhibit or otherwise provide;

68 [(8)] (9) "Material", anything printed or written, or
69 any picture, drawing, photograph, motion picture film,
70 videotape or videotape production, or pictorial

71 representation, or any recording or transcription, or any
72 mechanical, chemical, or electrical reproduction, or stored
73 computer data, or anything which is or may be used as a
74 means of communication. Material includes undeveloped
75 photographs, molds, printing plates, stored computer data
76 and other latent representational objects;

77 [(9)] (10) "Minor", any person less than eighteen
78 years of age;

79 [(10)] (11) "Nudity" or "state of nudity", the showing
80 of the human genitals, pubic area, vulva, anus, anal cleft,
81 or the female breast with less than a fully opaque covering
82 of any part of the nipple or areola;

83 [(11)] (12) "Obscene", any material or performance if,
84 taken as a whole:

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

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

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

92 [(12)] (13) "Operator", any person on the premises of
93 a sexually oriented business who causes the business to
94 function, puts or keeps the business in operation, or is
95 authorized to manage the business or exercise overall
96 operational control of the business premises. A person may
97 be found to be operating or causing to be operated a
98 sexually oriented business whether or not such person is an
99 owner, part owner, or licensee of the business;

100 [(13)] (14) "Performance", any play, motion picture
101 film, videotape, dance or exhibition performed before an
102 audience of one or more;

103 [(14)] (15) "Pornographic for minors", any material or
104 performance if the following apply:

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

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

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

118 [(15)] (16) "Premises", the real property upon which a
119 sexually oriented business is located, and all appurtenances
120 thereto and buildings thereon, including but not limited to
121 the sexually oriented business, the grounds, private
122 walkways, and parking lots or parking garages or both;

123 [(16)] (17) "Promote", to manufacture, issue, sell,
124 provide, mail, deliver, transfer, transmute, publish,
125 distribute, circulate, disseminate, present, exhibit, or
126 advertise, or to offer or agree to do the same, by any means
127 including a computer;

128 [(17)] (18) "Regularly", the consistent and repeated
129 doing of the act so described;

130 [(18)] (19) "Sadomasochistic abuse", flagellation or
131 torture by or upon a person as an act of sexual stimulation
132 or gratification;

133 [(19)] (20) "Semi-nude" or "state of semi-nudity", the
134 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

167 photographs, films, motion pictures, video cassettes,
168 compact discs, digital video discs, slides, or other visual
169 representations which are characterized by their emphasis
170 upon the display of specified sexual activities or specified
171 anatomical areas. A principal business activity exists
172 where the commercial establishment:

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

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

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

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

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

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

194 (b) An adult cabaret;

195 (c) An adult motion picture theater. "Adult motion
196 picture theater" means a commercial establishment where
197 films, motion pictures, video cassettes, slides, or similar
198 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;

231 [(23)] (24) "Sexual performance", any performance, or
232 part thereof, which includes sexual conduct by a child who
233 is less than eighteen years of age;

234 [(24)] (25) "Specified anatomical areas" include:

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

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

240 [(25)] (26) "Specified sexual activity", includes any
241 of the following:

242 (a) Intercourse, oral copulation, masturbation, or
243 sodomy; or

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

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

249 [(27)] (28) "Visual depiction", includes undeveloped
250 film and videotape, and data stored on computer disk or by
251 electronic means which is capable of conversion into a
252 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 other than an adult cabaret where**
5 **the adult cabaret performance is reasonably expected to be**
6 **viewed by a person who is not an adult.**

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

10 **3. The provisions of this section shall:**

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

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

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