

SECOND REGULAR SESSION

# SENATE BILL NO. 1476

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR NICOLA.

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KRISTINA MARTIN, Secretary

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### 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.

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*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2 are repealed and four new sections enacted in lieu thereof, to  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;

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

15 [ (3) ] (4) "Child", any person under the age of  
16 fourteen;

17 [ (4) ] (5) "Child pornography":

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

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

37 c. Such visual depiction has been created, adapted, or  
38 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

135 the top of the areola and extending across the width of the  
136 breast at such point, or the showing of the male or female  
137 buttocks. Such definition includes the lower portion of the  
138 human female breast, but shall not include any portion of  
139 the cleavage of the female breasts exhibited by a bikini,  
140 dress, blouse, shirt, leotard, or similar wearing apparel  
141 provided the areola is not exposed in whole or in part;

142 **[(20)] (21)** "Sexual conduct", actual or simulated,  
143 normal or perverted acts of human masturbation; deviate  
144 sexual intercourse; sexual intercourse; or physical contact  
145 with a person's clothed or unclothed genitals, pubic area,  
146 buttocks, or the breast of a female in an act of apparent  
147 sexual stimulation or gratification or any sadomasochistic  
148 abuse or acts including animals or any latent objects in an  
149 act of apparent sexual stimulation or gratification;

150 **[(21)] (22)** "Sexually explicit conduct", actual or  
151 simulated:

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

155 (b) Bestiality;

156 (c) Masturbation;

157 (d) Sadistic or masochistic abuse; or

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

160 **[(22)] (23)** "Sexually oriented business" includes:

161 (a) An adult bookstore or adult video store. "Adult  
162 bookstore" or "adult video store" means a commercial  
163 establishment which, as one of its principal business  
164 activities, offers for sale or rental for any form of  
165 consideration any one or more of the following: books,  
166 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

199 emphasis upon the display of specified sexual activities or  
200 specified anatomical areas are regularly shown to more than  
201 five persons for any form of consideration;

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

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

212 b. By a private college or university which maintains  
213 and operates educational programs in which credits are  
214 transferable to a college, junior college, or university  
215 supported entirely or partly by taxation; or

216 c. In a structure:

217 (i) Which has no sign visible from the exterior of the  
218 structure and no other advertising that indicates a semi-  
219 nude person is available for viewing; and

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

223 (e) A sexual encounter center. "Sexual encounter  
224 center" means a business or commercial enterprise that, as  
225 one of its principal purposes, purports to offer for any  
226 form of consideration physical contact in the form of  
227 wrestling or tumbling between two or more persons when one  
228 or more of the persons is semi-nude; **or**

229 (f) **Any business other than an adult cabaret that**  
230 **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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