

SECOND REGULAR SESSION

SENATE BILL NO. 1232

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

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5509S.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 67.2540, 67.2546, 67.2552, 567.080 and 573.503, RSMo, and to enact in lieu thereof nine new sections relating to sexually-oriented businesses, with penalty provisions and a severability clause.

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

Section A. Sections 67.2540, 67.2546, 67.2552, 567.080 and 573.503, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 67.2540, 67.2546, 67.2548, 67.2552, 67.2554, 67.2556, 311.488, 567.080 and 573.503, to read as follows:

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

(1) "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;

(2) "Licensee", a person in whose name a license to operate a sexually-oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case

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

15 of an employee, a person in whose name a license has been issued
16 authorizing employment in a sexually-oriented business;

17 (3) "Nudity" or a "state of nudity", the showing of the human male
18 or female genitals, pubic area, vulva, anus, anal cleft or anal cleavage
19 with less than a fully opaque covering, the showing of the female breast
20 with less than a fully opaque covering of any part of the nipple, or the
21 showing of the covered male genitals in a discernibly turgid state;

22 (4) "Nuisance", any place in or upon which lewdness, assignation,
23 or prostitution is conducted, permitted, continued, or exists, or any
24 place, in or upon which lewd, indecent, lascivious, or obscene films, or
25 films designed to be projected for exhibition, are photographed,
26 manufactured, developed, screened, exhibited, or otherwise prepared
27 or shown, and the personal property and contents used in conducting
28 and maintaining any such place for any such purpose. The provisions
29 of this section shall not affect any newspaper, magazine, or other
30 publication entered as second class matter by the post office
31 department;

32 (5) "Person", an individual, proprietorship, partnership,
33 corporation, association, or other legal entity;

34 (6) "Semi-nude" or in a "semi-nude condition", a state of dress in
35 which opaque clothing fails to cover the genitals, anus, anal cleft or
36 cleavage, pubic area, vulva, nipple and areola of the female breast
37 below a horizontal line across the top of the areola at its highest
38 point. Semi-nudity shall include the entire lower portion of the female
39 breast, but shall not include any portion of the cleavage of the human
40 female breast exhibited by wearing apparel provided the areola is not
41 exposed in whole or part;

42 (7) "Sexually-oriented business", an adult cabaret or any business
43 which offers its patrons goods of which a substantial portion are
44 sexually-oriented material, any business where more than ten percent
45 of display space is used for sexually-oriented materials shall be
46 presumed to be a sexually-oriented business;

47 (8) "Sexually-oriented materials", any textual, pictorial, or three
48 dimensional material, or film, motion picture, DVD, video cassette, or
49 similar photographic reproduction, that depicts nudity, sexual conduct,
50 sexual excitement, or sadomasochistic abuse in a way which is patently
51 offensive to the average person applying contemporary adult

52 community standards with respect to what is suitable for minors;

53 (9) "Specified criminal activity", includes the following offenses:

54 (a) Prostitution or promotion of prostitution; dissemination of
55 obscenity; sale, distribution, or display of harmful material to a minor;
56 sexual performance by a child; possession or distribution of child
57 pornography; public lewdness; indecent exposure; indecency with a
58 child; engaging in organized criminal activity; sexual assault;
59 molestation of a child; gambling prohibited under Missouri law; or
60 distribution of a controlled substance; or any similar offenses described
61 in this subdivision under the criminal or penal code of other states or
62 countries;

63 (b) For which:

64 a. Less than two years have elapsed since the date of conviction
65 or the date of release from confinement imposed for the conviction,
66 whichever is the later date, if the conviction is of a misdemeanor
67 offense;

68 b. Less than five years have elapsed since the date of conviction
69 or the date of release from confinement for the conviction, whichever
70 is the later date, if the conviction is of a felony offense; or

71 c. Less than five years have elapsed since the date of the last
72 conviction or the date of release from confinement for the last
73 conviction, whichever is the later date, if the convictions are of two or
74 more misdemeanor offenses or combination of misdemeanor offenses
75 occurring within any twenty-four month period;

76 (c) The fact that a conviction is being appealed shall have no
77 effect on the disqualification of the applicant or a person residing with
78 the applicant;

79 (10) "Specified sexual activities", includes the following acts:

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

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

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

67.2546. 1. A person who operates or causes to be operated a
2 sexually-oriented business shall be prohibited from exhibiting in a
3 viewing room on the premises a film, video cassette, DVD, or other

4 video reproduction that depicts specified sexual activities.

5 2. If a sexually-oriented business allows specified criminal
6 activity or specified sexual activity on its premises or otherwise fails
7 to comply with the provisions of subsection 1 of this section, it shall be
8 considered a nuisance as defined by section 67.2540, and shall be closed
9 pursuant to section 567.080, RSMo.

10 3. A person violating the provisions of subsection 1 of this
11 section is guilty of a class A misdemeanor.

67.2548. 1. A sexually-oriented business shall not employ any
2 person who is not yet twenty-one years of age.

3 2. A person violating the provisions of subsection 1 of this
4 section is guilty of a class A misdemeanor.

67.2552. 1. It shall be a class A misdemeanor for a person to
2 knowingly and intentionally appear in a state of nudity or depict,
3 simulate, or perform specified sexual activities in a sexually-oriented
4 business.

5 2. It shall be a class A misdemeanor for a person to appear
6 knowingly or intentionally in a sexually-oriented business in a semi-
7 nude condition unless the person is an employee who, while semi-nude,
8 shall be at least ten feet from any patron or customer and on a stage at
9 least two feet from the floor and behind a railing no less than twenty-
10 four inches in height.

11 3. It shall be a class A misdemeanor for an employee, while semi-
12 nude in a sexually-oriented business, to solicit any pay or gratuity from
13 any patron or customer or for any patron or customer to pay or give
14 any gratuity to any employee, while said employee is semi-nude in a
15 sexually-oriented business.

16 4. It shall be a class A misdemeanor for an employee, while semi-
17 nude, to touch a customer or the clothing of a customer.

18 5. It shall be a class A misdemeanor if a person knowingly allows
19 on the premises of a sexually-oriented business a person under the age
20 of twenty-one years, except for a person exclusively on the premises for
21 repair or maintenance of the premises or equipment on the premises,
22 or for the delivery of goods to the premises.

23 6. No sexually-oriented business may remain open at any time
24 between the hours of twelve a.m. and ten a.m. on weekdays and
25 Saturdays. Such businesses shall be closed on all official state or

26 federal holidays and Sundays.

67.2554. 1. Any county, city, town, or village may create an ordinance requiring sexually-oriented businesses to be licensed and may collect a nonrefundable deposit fee to be paid prior to the processing of the licensing application. The application for such a license shall require the applicant to provide the following information:

- 6 (1) The applicant's name;
- 7 (2) The applicant's age, date of birth, and place of birth;
- 8 (3) The address and telephone number of the applicant's present residence;
- 9 (4) The address and telephone number of the applicant's present business;
- 10 (5) The number on the applicant's driver's license or other state-issued identification card;
- 11 (6) The date on which the applicant's driver's license or other state-issued identification card was issued;
- 12 (7) The state that issued the applicant's driver's license or other state-issued identification card;
- 13 (8) Written proof that the individual is at least twenty-one years of age.

2. A license shall not be issued to any person who has had a conviction of a felony or misdemeanor relating to sex offenses or obscenity offenses in the past ten years.

67.2556. 1. For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of all counties, cities, towns, and villages is hereby empowered to regulate and restrict the location of sexually-oriented businesses in accordance with the general zoning powers granted to cities, towns, and villages under section 89.020, RSMo, counties with a charter form of government under section 64.090, RSMo, counties of the first classification under section 64.255, RSMo, counties of the second and third classification under section 64.620, RSMo, and all counties except those with a charter form of government under section 64.850, RSMo.

2. The provisions of sections 67.2540 to 67.2556 are 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 limit harm to minors, and to reduce

15 **prostitution, crime, juvenile delinquency, deterioration in property**
16 **values, and lethargy in neighborhood improvement efforts.**

311.488. **The supervisor of the division of alcohol and tobacco**
2 **control shall not issue a license to sell intoxicating liquor or**
3 **nonintoxicating beer to a sexually-oriented business as defined by**
4 **section 67.2540, RSMo.**

567.080. 1. Any room, building or other structure regularly used for
2 sexual contact for pay as defined in section 567.010 or any unlawful prostitution
3 activity prohibited by this chapter **or any building, place, or the ground**
4 **itself, in or upon which any lewdness or assignation is conducted,**
5 **permitted, continued, or exists** is a public nuisance.

6 2. **Any person who erects, establishes, continues, maintains, uses,**
7 **owns, or leases any building or other place for the purpose of lewdness,**
8 **assignation, sexual contact for pay as defined in section 567.010 or any**
9 **unlawful prostitution activity prohibited by this chapter is guilty of**
10 **maintaining a nuisance and on conviction shall be punished by a fine**
11 **not to exceed one thousand dollars or by imprisonment in the county**
12 **jail for a period not to exceed one year, or by both the fine and**
13 **imprisonment.**

14 3. The attorney general, circuit attorney or prosecuting attorney may, in
15 addition to all criminal sanctions, prosecute a suit in equity to enjoin the
16 nuisance. If the court finds that [the] **any owner, lessee, sublessee, employee**
17 **or agent of the owner, assignee, or partner of the owner** of the room,
18 **building or its grounds,** or structure knew or had reason to believe that the
19 premises were being used regularly for sexual contact for pay or unlawful
20 prostitution activity, **or any act of lewdness or assignation,** the court may
21 order that the premises shall not be occupied or used for such period as the court
22 may determine, not to exceed one year.

23 [3.] 4. All persons, including owners, **partners,** lessees, **sublessees,**
24 officers, agents, inmates or employees, aiding or facilitating such a nuisance may
25 be made defendants in any suit to enjoin the nuisance, and they may be enjoined
26 from engaging in any sexual contact for pay or unlawful prostitution activity
27 anywhere within the jurisdiction of the court.

28 [4.] 5. Appeals shall be allowed from the judgment of the court as in
29 other civil actions.

573.503. 1. Notwithstanding any provision of law to the contrary, any city

2 not within a county and any county may, by order or ordinance, require a
3 background check be conducted on all employees of any adult cabaret or
4 **sexually-oriented business as defined in section 67.2540, RSMo**, to
5 ascertain whether any such employees have been convicted of or have pled guilty
6 to any misdemeanor or felony involving prostitution or aiding or abetting
7 prostitution, drug possession or trafficking, money laundering, tax evasion, or
8 illegal gambling activity.

9 **2. If an order or ordinance is created that requires employees of**
10 **an adult cabaret or sexually-oriented business as defined in section**
11 **67.2540, RSMo, to complete a background check under subsection 1 of**
12 **this section, a violation of such an order or ordinance shall be a class**
13 **B misdemeanor.**

[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 similar
4 establishment in which persons regularly appear in a state of
5 nudity, as defined in section 573.500, RSMo, or seminudity in the
6 performance of their duties;

7 (2) "Employee", a person who is at least twenty-one years
8 of age and who performs any service on the premises of a sexually
9 oriented business on a full-time, part-time, or contract basis,
10 whether or not the person is denominated an employee,
11 independent contractor, agent, or otherwise, and whether or not
12 said person is paid a salary, wage, or other compensation by the
13 operator of said business. The term employee does not include a
14 person exclusively on the premises for repair or maintenance of the
15 premises or equipment on the premises, or for the delivery of goods
16 to the premises;

17 (3) "Nudity" or a "state of nudity", the showing of the
18 human male or female genitals, pubic area, vulva, anus, anal cleft
19 or anal cleavage with less than a fully opaque covering, the
20 showing of the female breast with less than a fully opaque covering
21 of any part of the nipple, or the showing of the covered male
22 genitals in a discernibly turgid state;

23 (4) "Nuisance", any place in or upon which lewdness,
24 assignation, or prostitution is conducted, permitted, continued, or

25 exists, or any place, in or upon which lewd, indecent, lascivious, or
26 obscene films, or films designed to be projected for exhibition, are
27 photographed, manufactured, developed, screened, exhibited, or
28 otherwise prepared or shown, and the personal property and
29 contents used in conducting and maintaining any such place for
30 any such purpose. The provisions of this section shall not affect
31 any newspaper, magazine, or other publication entered as second
32 class matter by the post office department;

33 (5) "Person", an individual, proprietorship, partnership,
34 corporation, association, or other legal entity;

35 (6) "Seminude" or in a "seminude condition", a state of
36 dress in which opaque clothing fails to cover the genitals, anus,
37 anal cleft or cleavage, pubic area, vulva, nipple and areola of the
38 female breast below a horizontal line across the top of the areola
39 at its highest point. Seminudity shall include the entire lower
40 portion of the female breast, but shall not include any portion of
41 the cleavage of the human female breast exhibited by wearing
42 apparel provided the areola is not exposed in whole or part;

43 (7) "Sexually oriented business", an adult cabaret or any
44 business which offers its patrons goods of which a substantial or
45 significant portion are sexually oriented material. It shall be
46 presumed that a business that derives thirty percent or less of its
47 revenue from sexually oriented materials is presumed not to be a
48 sexually oriented business. No building, premises, structure, or
49 other facility that contains any sexually oriented business shall
50 contain any other kind of sexually oriented business;

51 (8) "Sexually oriented materials", any pictorial or three-
52 dimensional material, or film, motion picture, DVD, video cassette,
53 or similar photographic reproduction, that depicts nudity, sexual
54 conduct, sexual excitement, or sadomasochistic abuse, as defined
55 in section 573.010, RSMo;

56 (9) "Specified criminal activity" includes the following
57 offenses:

58 (a) Prostitution or promotion of prostitution; dissemination
59 of obscenity; sale, distribution, or display of harmful material to a
60 minor; sexual performance by a child; possession or distribution of

61 child pornography; public lewdness; indecent exposure; indecency
62 with a child; engaging in organized criminal activity; sexual
63 assault; molestation of a child; gambling prohibited under Missouri
64 law; or distribution of a controlled substance; or any similar
65 offenses described in this subdivision under the criminal or penal
66 code of other states or countries;

67 (b) For which:

68 a. Less than two years have elapsed since the date of
69 conviction or the date of release from confinement imposed for the
70 conviction, whichever is the later date, if the conviction is of a
71 misdemeanor offense;

72 b. Less than five years have elapsed since the date of
73 conviction or the date of release from confinement for the
74 conviction, whichever is the later date, if the conviction is of a
75 felony offense; or

76 c. Less than five years have elapsed since the date of the
77 last conviction or the date of release from confinement for the last
78 conviction, whichever is the later date, if the convictions are of two
79 or more misdemeanor offenses or combination of misdemeanor
80 offenses occurring within any twenty-four-month period;

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

84 (10) "Specified sexual activities" includes the following acts:

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

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

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

2 [67.2546. 1. A person who operates or causes to be
3 operated a sexually oriented business shall be prohibited from
4 exhibiting in a viewing room on the premises a film, video cassette,
5 DVD, or other video reproduction that depicts specified sexual
6 activities unless the viewing room is visible from a continuous
main aisle in the sexually oriented business and such viewing room

7 is not obscured by any curtain, door, wall, or other enclosure. No
8 viewing room shall be occupied by more than one individual at a
9 time and there shall be no aperture between viewing rooms which
10 is designed or constructed to facilitate sexual activity between
11 persons in different rooms.

12 2. If a sexually oriented business allows specified criminal
13 activity or specified sexual activity on its premises or otherwise
14 fails to comply with the provisions of subsection 1 of this section,
15 it shall be considered a nuisance as defined by section 67.2540, and
16 shall be closed pursuant to section 567.080, RSMo.

17 3. A person violating the provisions of subsection 1 of this
18 section is guilty of a class A misdemeanor.]

[67.2552. 1. It shall be a class A misdemeanor for a person,
2 in a sexually oriented business, to knowingly and intentionally
3 appear in a state of nudity or depict, simulate, or perform specified
4 sexual activities.

5 2. It shall be a class A misdemeanor for a person to appear
6 knowingly or intentionally in a sexually oriented business in a
7 seminude condition unless the person is an employee who, while
8 seminude, shall be at least ten feet from any patron or customer
9 and on a stage at least two feet from the floor and behind a railing
10 no less than twenty-four inches in height.

11 3. It shall be a class A misdemeanor for an employee, while
12 seminude, to touch a customer or the clothing of a customer.

13 4. It shall be a class A misdemeanor if a person knowingly
14 allows on the premises of a sexually oriented business a person
15 under the age of twenty-one years, except for a person exclusively
16 on the premises for repair or maintenance of the premises or
17 equipment on the premises, or for the delivery of goods to the
18 premises.

19 5. The provisions of sections 67.2540 to 67.2552 are
20 designed to protect the following public policy interest of this state,
21 including but not limited to: to mitigate the adverse secondary
22 effects of sexually oriented businesses, to limit harm to minors, and
23 to reduce prostitution, crime, juvenile delinquency, deterioration in
24 property values and lethargy in neighborhood improvement efforts.]

Section B. If any provision of sections 67.2540 to 67.2556 and section
2 567.080 or the application thereof to anyone or to any circumstances is held
3 invalid, the remainder of those sections and the application of such provisions to
4 others or other circumstances shall not be affected thereby.

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Unofficial

Bill

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