

FIRST REGULAR SESSION

SENATE BILL NO. 300

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

Read 1st time January 17, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

0500S.021

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.

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Section A. Sections 67.2540, 67.2546, 67.2552, 567.080, and 573.503, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 67.2540, 67.2546, 67.2548, 67.2552, 67.2554, 67.2556, 311.488, 567.080, and 573.503, to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) "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, RSMo, or seminudity in the performance of their duties;

(2) "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) "Licensee", a person in whose name a license to operate a

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

15 **sexually oriented business has been issued, as well as the individual**
16 **listed as an applicant on the application for a license, and in the case**
17 **of an employee, a person in whose name a license has been issued**
18 **authorizing employment in a sexually oriented business;**

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

24 [(4)] (5) "Nuisance", any place in or upon which lewdness, assignation,
25 or prostitution is conducted, permitted, continued, or exists, or any place, in or
26 upon which lewd, indecent, lascivious, or obscene films, or films designed to be
27 projected for exhibition, are photographed, manufactured, developed, screened,
28 exhibited, or otherwise prepared or shown, and the personal property and
29 contents used in conducting and maintaining any such place for any such
30 purpose. The provisions of this section shall not affect any newspaper, magazine,
31 or other publication entered as second class matter by the post office department;

32 [(5)] (6) "Person", an individual, proprietorship, partnership, corporation,
33 association, or other legal entity;

34 [(6)] (7) "Seminude" or in a "seminude condition", a state of dress in
35 which opaque clothing fails to cover the genitals, anus, anal cleft or cleavage,
36 pubic area, vulva, nipple and areola of the female breast below a horizontal line
37 across the top of the areola at its highest point. Seminudity shall include the
38 entire lower portion of the female breast, but shall not include any portion of the
39 cleavage of the human female breast exhibited by wearing apparel provided the
40 areola is not exposed in whole or part;

41 [(7)] (8) "Sexually oriented business", an adult cabaret or any business
42 which offers its patrons goods of which a substantial or significant portion are
43 sexually oriented material. It shall be presumed that a business that derives
44 thirty percent or less of its revenue from sexually oriented materials is presumed
45 not to be a sexually oriented business. No building, premises, structure, or other
46 facility that contains any sexually oriented business shall contain any other kind
47 of sexually oriented business;

48 [(8)] (9) "Sexually oriented materials", any pictorial or three-dimensional
49 material, or film, motion picture, DVD, video cassette, or similar photographic
50 reproduction, that depicts nudity[,] or sexual conduct, sexual excitement, or

51 sadomasochistic abuse, as defined in section 573.010, RSMo;

52 ~~[(9)]~~ **(10)** "Specified criminal activity" includes the following offenses:

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

61 (b) For which:

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

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

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

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

76 ~~[(10)]~~ **(11)** "Specified sexual activities" includes the following acts:

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

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

81 (c) Excretory functions as part of or in connection with any of the
82 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 unless the**

5 viewing room is visible from a continuous main aisle in the sexually
6 oriented business and such viewing room is not obscured by any
7 curtain, door, wall, or other enclosure. No viewing room shall be
8 occupied by more than one individual at a time and there shall be no
9 aperture between viewing rooms which is designed or constructed to
10 facilitate sexual activity between persons in different rooms.

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

16 3. A person violating the provisions of subsection 1 of this
17 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, in a sexually
2 oriented business, to knowingly and intentionally appear in a state of nudity or
3 depict, simulate, or perform specified sexual activities.

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

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

14 4. It shall be a class A misdemeanor for an employee, while seminude, to
15 touch a customer or the clothing of a customer.

16 [4.] 5. It shall be a class A misdemeanor if a person knowingly allows on
17 the premises of a sexually oriented business a person under the age of twenty-one
18 years, except for a person exclusively on the premises for repair or maintenance
19 of the premises or equipment on the premises, or for the delivery of goods to the

20 premises.

21 **6. No sexually oriented business may remain open at any time**
22 **between the hours of 10:00 p.m. and 10:00 a.m. on weekdays and**
23 **Saturdays. Such businesses shall be closed on all official state or**
24 **federal holidays and Sundays.**

25 **[5.] 7. The provisions of sections 67.2540 to 67.2552 are designed to**
26 **protect the following public policy interest of this state, including but not limited**
27 **to: to mitigate the adverse secondary effects of sexually oriented businesses, to**
28 **limit harm to minors, and to reduce prostitution, crime, juvenile delinquency,**
29 **deterioration in property values and lethargy in neighborhood improvement**
30 **efforts.**

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

6 **(1) The applicant's name or any other name, including a stage**
7 **name or alias used by the individual;**

8 **(2) The applicant's age, date of birth, and place of birth;**

9 **(3) The address and telephone number of the applicant's present**
10 **residence;**

11 **(4) The address and telephone number of the applicant's present**
12 **business;**

13 **(5) The number on the applicant's driver's license or other state-**
14 **issued identification card;**

15 **(6) The date on which the applicant's driver's license or other**
16 **state-issued identification card was issued;**

17 **(7) The state that issued the applicant's driver's license or other**
18 **state-issued identification card;**

19 **(8) Written proof that the individual is at least twenty-one years**
20 **of age.**

21 **2. A license shall not be issued to any person who has been found**
22 **guilty of or pleaded guilty to a sexual offense, obscenity offense, or**
23 **alcohol-related offense, which is a felony or misdemeanor, in the past**
24 **ten years.**

67.2556. 1. For the purpose of promoting health, safety, morals
2 **or the general welfare of the community, the governing body of any**

3 county, city, town, or village is hereby empowered to regulate and
4 restrict the location of sexually oriented businesses in accordance with
5 the general zoning powers granted to cities, towns, and villages under
6 section 89.020, RSMo, counties with a charter form of government
7 under section 64.090, RSMo, counties of the first classification under
8 section 64.255, RSMo, counties of the second and third classification
9 under section 64.620, RSMo, and all counties except those with a
10 charter form of government under section 64.850, RSMo.

11 2. The provisions of sections 67.2540 to 67.2556 are designed to
12 protect the following public policy interests of this state, including but
13 not limited to: to mitigate the adverse secondary effects of sexually
14 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 or adult cabaret business
4 as defined by 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 to ascertain
4 whether any such employees have been convicted of or have pled guilty to any
5 misdemeanor or felony involving prostitution or aiding or abetting prostitution,
6 drug possession or trafficking, money laundering, tax evasion, or illegal gambling
7 activity.

8 2. **If an order or ordinance is created that requires employees of**
9 **an adult cabaret to complete a background check under subsection 1**
10 **of this section, a violation of such an order or ordinance shall be a class**
11 **B misdemeanor.**

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

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Bill

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