

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend SS/SCS/Senate Bill Nos. 189, 36 & 37, Page 3, Section 43.507, Line 31,

2 by inserting after all of said line the following:

3 "67.2540. As used in sections 67.2540 to 67.2556, the  
4 following terms mean:

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

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

15 (3) "Employee", a person who is at least twenty-one  
16 years of age and who performs any service on the premises of  
17 a sexually oriented business on a full-time, part-time, or  
18 contract basis, whether or not the person is denominated an  
19 employee, independent contractor, agent, or otherwise, and  
20 whether or not said person is paid a salary, wage, or other  
21 compensation by the operator of said business. The term  
22 employee does not include a person exclusively on the  
23 premises for repair or maintenance of the premises or  
24 equipment on the premises, or for the delivery of goods to  
25 the premises;

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

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

44 [(5)] (6) "Person", an individual, proprietorship,  
45 partnership, corporation, association, or other legal entity;

46 [(6)] (7) "Seminude" or in a "seminude condition", a  
47 state of dress in which opaque clothing fails to cover the  
48 genitals, anus, anal cleft or cleavage, pubic area, vulva,  
49 nipple and areola of the female breast below a horizontal  
50 line across the top of the areola at its highest point.  
51 Seminudity shall include the entire lower portion of the  
52 female breast, but shall not include any portion of the  
53 cleavage of the human female breast exhibited by wearing  
54 apparel provided the areola is not exposed in whole or part;

55 [(7)] (8) "Sexually oriented business", an adult  
56 cabaret [or], any business which offers its patrons goods of  
57 which a substantial or significant portion are sexually  
58 oriented material, or any business other than an adult

59 cabaret that offers an adult cabaret performance. It shall  
60 be presumed that a business that derives thirty percent or  
61 less of its revenue from sexually oriented materials is  
62 presumed not to be a sexually oriented business. **[No]** A  
63 building, premises, structure, or other facility that  
64 contains any sexually oriented business shall not contain  
65 any other kind of sexually oriented business, except that of  
66 an adult cabaret performance;

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

72 **[(9)]** (10) "Specified criminal activity" includes the  
73 following offenses:

74 (a) Prostitution or promotion of prostitution;  
75 dissemination of obscenity; sale, distribution, or display  
76 of harmful material to a minor; sexual performance by a  
77 child; possession or distribution of child pornography;  
78 public lewdness; indecent exposure; indecency with a child;  
79 engaging in organized criminal activity; sexual assault;  
80 molestation of a child; gambling prohibited under Missouri  
81 law; or distribution of a controlled substance; or any  
82 similar offenses described in this subdivision under the  
83 criminal or penal code of other states or countries;

84 (b) For which:

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

89 b. Less than five years have elapsed since the date of  
90 conviction or the date of release from confinement for the

91 conviction, whichever is the later date, if the conviction  
92 is of a felony offense; or

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

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

102 [(10)] (11) "Specified sexual activities" includes the  
103 following acts:

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

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

108 (c) Excretory functions as part of or in connection  
109 with any of the activities set forth in this subdivision."  
110 and

111 Further amend said bill, page 20, Section 217.690, line  
112 161, by inserting after all of said line the following:

113 "226.531. 1. As used in this section the following  
114 terms mean:

115 (1) "Adult cabaret", a nightclub, bar, restaurant, or  
116 similar establishment in which persons appear in a state of  
117 nudity, as defined in section [573.500] 573.010, or  
118 seminudity, in the performance of their duties;

119 (2) "Adult cabaret performance", a performance that  
120 appeals to a prurient interest in a location other than an  
121 adult cabaret that features topless dancers, go-go dancers,  
122 exotic dancers, strippers, male or female impersonators who

123 provide entertainment, or similar entertainers, regardless  
124 of whether performed for consideration;

125 (3) "Seminudity", a state of dress in which opaque  
126 clothing fails to cover the genitals, anus, anal cleft or  
127 cleavage, pubic area, vulva, nipple and areola of the female  
128 breast below a horizontal line across the top of the areola  
129 at its highest point. Seminudity shall include the entire  
130 lower portion of the female breast, but shall not include  
131 any portion of the cleavage of the human female breast  
132 exhibited by wearing apparel provided the areola is not  
133 exposed in whole or part;

134 ~~[(3)]~~ (4) "Sexually oriented business", any business  
135 which offers its patrons goods of which a substantial  
136 portion are sexually oriented materials or any business  
137 other than an adult cabaret that offers an adult cabaret  
138 performance. Any business where more than ten percent of  
139 display space is used for sexually oriented materials shall  
140 be presumed to be a sexually oriented business;

141 ~~[(4)]~~ (5) "Sexually oriented materials", any textual,  
142 pictorial, or three-dimensional material that depicts  
143 nudity, sexual conduct, sexual excitement, or  
144 sadomasochistic abuse in a way which is patently offensive  
145 to the average person applying contemporary adult community  
146 standards with respect to what is suitable for minors.

147 2. No billboard or other exterior advertising sign for  
148 an adult cabaret or sexually oriented business shall be  
149 located within one mile of any state highway except if such  
150 business is located within one mile of a state highway then  
151 the business may display a maximum of two exterior signs on  
152 the premises of the business, consisting of one  
153 identification sign and one sign solely giving notice that  
154 the premises are off limits to minors. The identification  
155 sign shall be no more than forty square feet in size and

156 shall include no more than the following information: name,  
157 street address, telephone number, and operating hours of the  
158 business.

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

163 4. Any owner of such a business who violates the  
164 provisions of this section shall be guilty of a class C  
165 misdemeanor. Each week a violation of this section  
166 continues to exist shall constitute a separate offense.

167 5. This section is designed to protect the following  
168 public policy interests of this state, including but not  
169 limited to: to mitigate the adverse secondary effects of  
170 sexually oriented businesses, to improve traffic safety, to  
171 limit harm to minors, and to reduce prostitution, crime,  
172 juvenile delinquency, deterioration in property values, and  
173 lethargy in neighborhood improvement efforts."; and

174 Further amend said bill, page 51, Section 571.070, line  
175 18, by inserting after all of said line the following:

176 "573.010. As used in this chapter the following terms  
177 shall mean:

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

182 (2) "Adult cabaret performance", a performance that  
183 appeals to a prurient interest in a location other than an  
184 adult cabaret that features topless dancers, go-go dancers,  
185 exotic dancers, strippers, male or female impersonators who  
186 provide entertainment, or similar entertainers, regardless  
187 of whether performed for consideration;

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

190           [(3)] (4) "Child", any person under the age of  
191 fourteen;

192           [(4)] (5) "Child pornography":

193           (a) Any obscene material or performance depicting  
194 sexual conduct, sexual contact as defined in section  
195 566.010, or a sexual performance and which has as one of its  
196 participants or portrays as an observer of such conduct,  
197 contact, or performance a minor; or

198           (b) Any visual depiction, including any photograph,  
199 film, video, picture, or computer or computer-generated  
200 image or picture, whether made or produced by electronic,  
201 mechanical, or other means, of sexually explicit conduct  
202 where:

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

205           b. Such visual depiction is a digital image, computer  
206 image, or computer-generated image that is, or is  
207 indistinguishable from, that of a minor engaging in sexually  
208 explicit conduct, in that the depiction is such that an  
209 ordinary person viewing the depiction would conclude that  
210 the depiction is of an actual minor engaged in sexually  
211 explicit conduct; or

212           c. Such visual depiction has been created, adapted, or  
213 modified to show that an identifiable minor is engaging in  
214 sexually explicit conduct. "Identifiable minor" means a  
215 person who was a minor at the time the visual depiction was  
216 created, adapted, or modified; or whose image as a minor was  
217 used in creating, adapting, or modifying the visual  
218 depiction; and who is recognizable as an actual person by  
219 the person's face, likeness, or other distinguishing  
220 characteristic, such as a unique birthmark or other

221 recognizable feature. The term identifiable minor shall not  
222 be construed to require proof of the actual identity of the  
223 identifiable minor;

224 [(5)] (6) "Employ", "employee", or "employment", any  
225 person who performs any service on the premises of a  
226 sexually oriented business, on a full-time, part-time, or  
227 contract basis, whether or not the person is denominated an  
228 employee, independent contractor, agent, or otherwise.  
229 Employee does not include a person exclusively on the  
230 premises for repair or maintenance of the premises or for  
231 the delivery of goods to the premises;

232 [(6)] (7) "Explicit sexual material", any pictorial or  
233 three-dimensional material depicting human masturbation,  
234 deviate sexual intercourse, sexual intercourse, direct  
235 physical stimulation or unclothed genitals, sadomasochistic  
236 abuse, or emphasizing the depiction of postpubertal human  
237 genitals; provided, however, that works of art or of  
238 anthropological significance shall not be deemed to be  
239 within the foregoing definition;

240 [(7)] (8) "Furnish", to issue, sell, give, provide,  
241 lend, mail, deliver, transfer, circulate, disseminate,  
242 present, exhibit or otherwise provide;

243 [(8)] (9) "Material", anything printed or written, or  
244 any picture, drawing, photograph, motion picture film,  
245 videotape or videotape production, or pictorial  
246 representation, or any recording or transcription, or any  
247 mechanical, chemical, or electrical reproduction, or stored  
248 computer data, or anything which is or may be used as a  
249 means of communication. Material includes undeveloped  
250 photographs, molds, printing plates, stored computer data  
251 and other latent representational objects;

252 [(9)] (10) "Minor", any person less than eighteen  
253 years of age;

254 [(10)] (11) "Nudity" or "state of nudity", the showing  
255 of the human genitals, pubic area, vulva, anus, anal cleft,  
256 or the female breast with less than a fully opaque covering  
257 of any part of the nipple or areola;

258 [(11)] (12) "Obscene", any material or performance if,  
259 taken as a whole:

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

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

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

267 [(12)] (13) "Operator", any person on the premises of  
268 a sexually oriented business who causes the business to  
269 function, puts or keeps the business in operation, or is  
270 authorized to manage the business or exercise overall  
271 operational control of the business premises. A person may  
272 be found to be operating or causing to be operated a  
273 sexually oriented business whether or not such person is an  
274 owner, part owner, or licensee of the business;

275 [(13)] (14) "Performance", any play, motion picture  
276 film, videotape, dance or exhibition performed before an  
277 audience of one or more;

278 [(14)] (15) "Pornographic for minors", any material or  
279 performance if the following apply:

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

284 (b) The material or performance depicts or describes  
285 nudity, sexual conduct, the condition of human genitals when  
286 in a state of sexual stimulation or arousal, or

287 sadomasochistic abuse in a way which is patently offensive  
288 to the average person applying contemporary adult community  
289 standards with respect to what is suitable for minors; and

290 (c) The material or performance, taken as a whole,  
291 lacks serious literary, artistic, political, or scientific  
292 value for minors;

293 [(15)] (16) "Premises", the real property upon which a  
294 sexually oriented business is located, and all appurtenances  
295 thereto and buildings thereon, including but not limited to  
296 the sexually oriented business, the grounds, private  
297 walkways, and parking lots or parking garages or both;

298 [(16)] (17) "Promote", to manufacture, issue, sell,  
299 provide, mail, deliver, transfer, transmute, publish,  
300 distribute, circulate, disseminate, present, exhibit, or  
301 advertise, or to offer or agree to do the same, by any means  
302 including a computer;

303 [(17)] (18) "Regularly", the consistent and repeated  
304 doing of the act so described;

305 [(18)] (19) "Sadomasochistic abuse", flagellation or  
306 torture by or upon a person as an act of sexual stimulation  
307 or gratification;

308 [(19)] (20) "Semi-nude" or "state of semi-nudity", the  
309 showing of the female breast below a horizontal line across  
310 the top of the areola and extending across the width of the  
311 breast at such point, or the showing of the male or female  
312 buttocks. Such definition includes the lower portion of the  
313 human female breast, but shall not include any portion of  
314 the cleavage of the female breasts exhibited by a bikini,  
315 dress, blouse, shirt, leotard, or similar wearing apparel  
316 provided the areola is not exposed in whole or in part;

317 [(20)] (21) "Sexual conduct", actual or simulated,  
318 normal or perverted acts of human masturbation; deviate  
319 sexual intercourse; sexual intercourse; or physical contact

320 with a person's clothed or unclothed genitals, pubic area,  
321 buttocks, or the breast of a female in an act of apparent  
322 sexual stimulation or gratification or any sadomasochistic  
323 abuse or acts including animals or any latent objects in an  
324 act of apparent sexual stimulation or gratification;

325 [(21)] (22) "Sexually explicit conduct", actual or  
326 simulated:

327 (a) Sexual intercourse, including genital-genital,  
328 oral-genital, anal-genital, or oral-anal, whether between  
329 persons of the same or opposite sex;

330 (b) Bestiality;

331 (c) Masturbation;

332 (d) Sadistic or masochistic abuse; or

333 (e) Lascivious exhibition of the genitals or pubic  
334 area of any person;

335 [(22)] (23) "Sexually oriented business" includes:

336 (a) An adult bookstore or adult video store. "Adult  
337 bookstore" or "adult video store" means a commercial  
338 establishment which, as one of its principal business  
339 activities, offers for sale or rental for any form of  
340 consideration any one or more of the following: books,  
341 magazines, periodicals, or other printed matter, or  
342 photographs, films, motion pictures, video cassettes,  
343 compact discs, digital video discs, slides, or other visual  
344 representations which are characterized by their emphasis  
345 upon the display of specified sexual activities or specified  
346 anatomical areas. A principal business activity exists  
347 where the commercial establishment:

348 a. Has a substantial portion of its displayed  
349 merchandise which consists of such items; or

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

352           c. Has a substantial portion of the retail value of  
353 its displayed merchandise which consists of such items; or  
354           d. Derives a substantial portion of its revenues from  
355 the sale or rental, for any form of consideration, of such  
356 items; or  
357           e. Maintains a substantial section of its interior  
358 business space for the sale or rental of such items; or  
359           f. Maintains an adult arcade. "Adult arcade" means  
360 any place to which the public is permitted or invited  
361 wherein coin-operated or slug-operated or electronically,  
362 electrically, or mechanically controlled still or motion  
363 picture machines, projectors, or other image-producing  
364 devices are regularly maintained to show images to five or  
365 fewer persons per machine at any one time, and where the  
366 images so displayed are characterized by their emphasis upon  
367 matter exhibiting specified sexual activities or specified  
368 anatomical areas;  
369           (b) An adult cabaret;  
370           (c) An adult motion picture theater. "Adult motion  
371 picture theater" means a commercial establishment where  
372 films, motion pictures, video cassettes, slides, or similar  
373 photographic reproductions, which are characterized by their  
374 emphasis upon the display of specified sexual activities or  
375 specified anatomical areas are regularly shown to more than  
376 five persons for any form of consideration;  
377           (d) A semi-nude model studio. "Semi-nude model  
378 studio" means a place where persons regularly appear in a  
379 state of semi-nudity for money or any form of consideration  
380 in order to be observed, sketched, drawn, painted,  
381 sculptured, photographed, or similarly depicted by other  
382 persons. Such definition shall not apply to any place where  
383 persons appearing in a state of semi-nudity do so in a  
384 modeling class operated:

385           a. By a college, junior college, or university  
386 supported entirely or partly by taxation;

387           b. By a private college or university which maintains  
388 and operates educational programs in which credits are  
389 transferable to a college, junior college, or university  
390 supported entirely or partly by taxation; or

391           c. In a structure:

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

395           (ii) Where, in order to participate in a class, a  
396 student must enroll at least three days in advance of the  
397 class;

398           (e) A sexual encounter center. "Sexual encounter  
399 center" means a business or commercial enterprise that, as  
400 one of its principal purposes, purports to offer for any  
401 form of consideration physical contact in the form of  
402 wrestling or tumbling between two or more persons when one  
403 or more of the persons is semi-nude; or

404           (f) Any business other than an adult cabaret that  
405 offers an adult cabaret performance;

406           [(23)] (24) "Sexual performance", any performance, or  
407 part thereof, which includes sexual conduct by a child who  
408 is less than eighteen years of age;

409           [(24)] (25) "Specified anatomical areas" include:

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

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

415           [(25)] (26) "Specified sexual activity", includes any  
416 of the following:

417 (a) Intercourse, oral copulation, masturbation, or  
418 sodomy; or

419 (b) Excretory functions as a part of or in connection  
420 with any of the activities described in paragraph (a) of  
421 this subdivision;

422 [(26)] (27) "Substantial", at least thirty percent of  
423 the item or items so modified;

424 [(27)] (28) "Visual depiction", includes undeveloped  
425 film and videotape, and data stored on computer disk or by  
426 electronic means which is capable of conversion into a  
427 visual image.

428 573.520. 1. A person commits the offense of engaging  
429 in an adult cabaret performance if such performance is:

430 (1) On public property; or

431 (2) In a location other than an adult cabaret where  
432 the adult cabaret performance is reasonably expected to be  
433 viewed by a person who is not an adult.

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

437 3. The provisions of this section shall:

438 (1) Preempt an ordinance or a regulation, restriction,  
439 or license that was lawfully adopted or issued by a  
440 political subdivision prior to August 28, 2023, if such  
441 ordinance, regulation, restriction, or license conflicts  
442 with this section; and

443 (2) Prevent or preempt a political subdivision from  
444 enacting and enforcing in the future other ordinances,  
445 regulations, restrictions, or licenses that are in conflict  
446 with this section."; and

447 Further amend the title and enacting clause accordingly.