

FIRST REGULAR SESSION

SENATE BILL NO. 429

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CARTER.

1683S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 67.2540, 226.531, and 573.010, RSMo, and to enact in lieu thereof three 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, 226.531, and 573.010, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 67.2540, 226.531, and 573.010, to read as
4 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) "**Biological sex**", the biological indication of the
8 physical condition of being male or female, which is
9 determined by an individual's chromosomes, identified at
10 birth by an individual's anatomy, and indicated on the
11 individual's birth certificate, without regard to an
12 individual's psychological, chosen, or subjective experience
13 of gender;

14 (3) "**Drag performance**", a performance in which a
15 performer exhibits a gender that is different from the
16 performer's biological sex as assigned at birth using
17 clothing, makeup, or other physical markers and sings, lip

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

18 **syncs, dances, or otherwise performs before an audience for**
19 **entertainment;**

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

31 [(3)] (5) "Nudity" or a "state of nudity", the showing
32 of the human male or female genitals, pubic area, vulva,
33 anus, anal cleft or anal cleavage with less than a fully
34 opaque covering, the showing of the female breast with less
35 than a fully opaque covering of any part of the nipple, or
36 the showing of the covered male genitals in a discernibly
37 turgid state;

38 [(4)] (6) "Nuisance", any place in or upon which
39 lewdness, assignation, or prostitution is conducted,
40 permitted, continued, or exists, or any place, in or upon
41 which lewd, indecent, lascivious, or obscene films, or films
42 designed to be projected for exhibition, are photographed,
43 manufactured, developed, screened, exhibited, or otherwise
44 prepared or shown, and the personal property and contents
45 used in conducting and maintaining any such place for any
46 such purpose. The provisions of this section shall not
47 affect any newspaper, magazine, or other publication entered
48 as second class matter by the post office department;

49 [(5)] (7) "Person", an individual, proprietorship,
50 partnership, corporation, association, or other legal entity;

51 [(6)] (8) "Seminude" or in a "seminude condition", a
52 state of dress in which opaque clothing fails to cover the
53 genitals, anus, anal cleft or cleavage, pubic area, vulva,
54 nipple and areola of the female breast below a horizontal
55 line across the top of the areola at its highest point.
56 Seminudity shall include the entire lower portion of the
57 female breast, but shall not include any portion of the
58 cleavage of the human female breast exhibited by wearing
59 apparel provided the areola is not exposed in whole or part;

60 [(7)] (9) "Sexually oriented business", an adult
61 cabaret or any business which offers its patrons goods of
62 which a substantial or significant portion are sexually
63 oriented material **or any nightclub, bar, restaurant, or**
64 **similar commercial enterprise that provides an audience of**
65 **two or more individuals a drag performance.** It shall be
66 presumed that a business that derives thirty percent or less
67 of its revenue from sexually oriented materials is presumed
68 not to be a sexually oriented business. No building,
69 premises, structure, or other facility that contains any
70 sexually oriented business shall contain any other kind of
71 sexually oriented business;

72 [(8)] (10) "Sexually oriented materials", any
73 pictorial or three-dimensional material, or film, motion
74 picture, DVD, video cassette, or similar photographic
75 reproduction, that depicts nudity, sexual conduct, sexual
76 excitement, or sadomasochistic abuse, as defined in section
77 573.010;

78 [(9)] (11) "Specified criminal activity" includes the
79 following offenses:

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

(b) For which:

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

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

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

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

[(10)] (12) "Specified sexual activities" includes the following acts:

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

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

114 (c) Excretory functions as part of or in connection
115 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, or seminudity, in the
6 performance of their duties;

7 (2) **"Biological sex", the biological indication of the**
8 **physical condition of being male or female, which is**
9 **determined by an individual's chromosomes, identified at**
10 **birth by an individual's anatomy, and indicated on the**
11 **individual's birth certificate, without regard to an**
12 **individual's psychological, chosen, or subjective experience**
13 **of gender;**

14 (3) **"Drag performance", a performance in which a**
15 **performer exhibits a gender that is different from the**
16 **performer's biological sex as assigned at birth using**
17 **clothing, makeup, or other physical markers and sings, lip**
18 **syncs, dances, or otherwise performs before an audience for**
19 **entertainment;**

20 (4) "Seminudity", a state of dress in which opaque
21 clothing fails to cover the genitals, anus, anal cleft or
22 cleavage, pubic area, vulva, nipple and areola of the female
23 breast below a horizontal line across the top of the areola
24 at its highest point. Seminudity shall include the entire
25 lower portion of the female breast, but shall not include
26 any portion of the cleavage of the human female breast
27 exhibited by wearing apparel provided the areola is not
28 exposed in whole or part;

29 [(3)] (5) "Sexually oriented business", any business
30 which offers its patrons goods of which a substantial
31 portion are sexually oriented materials **or any nightclub,**
32 **bar, restaurant, or similar commercial enterprise that**
33 **provides an audience of two or more individuals a drag**
34 **performance.** Any business where more than ten percent of
35 display space is used for sexually oriented materials shall
36 be presumed to be a sexually oriented business;

37 [(4)] (6) "Sexually oriented materials", any textual,
38 pictorial, or three-dimensional material that depicts
39 nudity, sexual conduct, sexual excitement, or
40 sadomasochistic abuse in a way which is patently offensive
41 to the average person applying contemporary adult community
42 standards with respect to what is suitable for minors.

43 2. No billboard or other exterior advertising sign for
44 an adult cabaret or sexually oriented business shall be
45 located within one mile of any state highway except if such
46 business is located within one mile of a state highway then
47 the business may display a maximum of two exterior signs on
48 the premises of the business, consisting of one
49 identification sign and one sign solely giving notice that
50 the premises are off limits to minors. The identification
51 sign shall be no more than forty square feet in size and
52 shall include no more than the following information: name,
53 street address, telephone number, and operating hours of the
54 business.

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

59 4. Any owner of such a business who violates the
60 provisions of this section shall be guilty of a class C

61 misdemeanor. Each week a violation of this section
62 continues to exist shall constitute a separate offense.

63 5. This section is designed to protect the following
64 public policy interests of this state, including but not
65 limited to: to mitigate the adverse secondary effects of
66 sexually oriented businesses, to improve traffic safety, to
67 limit harm to minors, and to reduce prostitution, crime,
68 juvenile delinquency, deterioration in property values, and
69 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;

7 (2) **"Biological sex", the biological indication of the**
8 **physical condition of being male or female, which is**
9 **determined by an individual's chromosomes, identified at**
10 **birth by an individual's anatomy, and indicated on the**
11 **individual's birth certificate, without regard to an**
12 **individual's psychological, chosen, or subjective experience**
13 **of gender;**

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

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

18 [(4)] (5) "Child pornography":

19 (a) Any obscene material or performance depicting
20 sexual conduct, sexual contact as defined in section
21 566.010, or a sexual performance and which has as one of its
22 participants or portrays as an observer of such conduct,
23 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 sexually explicit conduct. "Identifiable minor" means a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature. The term identifiable minor shall not be construed to require proof of the actual identity of the identifiable minor;

[(5)] (6) "Drag performance", a performance in which a performer exhibits a gender that is different from the performer's biological sex as assigned at birth using clothing, makeup, or other physical markers and sings, lip syncs, dances, or otherwise performs before an audience for entertainment;

56 (7) "Employ", "employee", or "employment", any person
57 who performs any service on the premises of a sexually
58 oriented business, on a full-time, part-time, or contract
59 basis, whether or not the person is denominated an employee,
60 independent contractor, agent, or otherwise. Employee does
61 not include a person exclusively on the premises for repair
62 or maintenance of the premises or for the delivery of goods
63 to the premises;

64 [(6)] (8) "Explicit sexual material", any pictorial or
65 three-dimensional material depicting human masturbation,
66 deviate sexual intercourse, sexual intercourse, direct
67 physical stimulation or unclothed genitals, sadomasochistic
68 abuse, or emphasizing the depiction of postpubertal human
69 genitals; provided, however, that works of art or of
70 anthropological significance shall not be deemed to be
71 within the foregoing definition;

72 [(7)] (9) "Furnish", to issue, sell, give, provide,
73 lend, mail, deliver, transfer, circulate, disseminate,
74 present, exhibit or otherwise provide;

75 [(8)] (10) "Material", anything printed or written, or
76 any picture, drawing, photograph, motion picture film,
77 videotape or videotape production, or pictorial
78 representation, or any recording or transcription, or any
79 mechanical, chemical, or electrical reproduction, or stored
80 computer data, or anything which is or may be used as a
81 means of communication. Material includes undeveloped
82 photographs, molds, printing plates, stored computer data
83 and other latent representational objects;

84 [(9)] (11) "Minor", any person less than eighteen
85 years of age;

86 [(10)] (12) "Nudity" or "state of nudity", the showing
87 of the human genitals, pubic area, vulva, anus, anal cleft,

88 or the female breast with less than a fully opaque covering
89 of any part of the nipple or areola;

90 [(11)] (13) "Obscene", any material or performance if,
91 taken as a whole:

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

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

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

99 [(12)] (14) "Operator", any person on the premises of
100 a sexually oriented business who causes the business to
101 function, puts or keeps the business in operation, or is
102 authorized to manage the business or exercise overall
103 operational control of the business premises. A person may
104 be found to be operating or causing to be operated a
105 sexually oriented business whether or not such person is an
106 owner, part owner, or licensee of the business;

107 [(13)] (15) "Performance", any play, motion picture
108 film, videotape, dance or exhibition performed before an
109 audience of one or more;

110 [(14)] (16) "Pornographic for minors", any material or
111 performance if the following apply:

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

116 (b) The material or performance depicts or describes
117 nudity, sexual conduct, the condition of human genitals when
118 in a state of sexual stimulation or arousal, or
119 sadomasochistic abuse in a way which is patently offensive

120 to the average person applying contemporary adult community
121 standards with respect to what is suitable for minors; and

122 (c) The material or performance, taken as a whole,
123 lacks serious literary, artistic, political, or scientific
124 value for minors;

125 [(15)] (17) "Premises", the real property upon which a
126 sexually oriented business is located, and all appurtenances
127 thereto and buildings thereon, including but not limited to
128 the sexually oriented business, the grounds, private
129 walkways, and parking lots or parking garages or both;

130 [(16)] (18) "Promote", to manufacture, issue, sell,
131 provide, mail, deliver, transfer, transmute, publish,
132 distribute, circulate, disseminate, present, exhibit, or
133 advertise, or to offer or agree to do the same, by any means
134 including a computer;

135 [(17)] (19) "Regularly", the consistent and repeated
136 doing of the act so described;

137 [(18)] (20) "Sadomasochistic abuse", flagellation or
138 torture by or upon a person as an act of sexual stimulation
139 or gratification;

140 [(19)] (21) "Semi-nude" or "state of semi-nudity", the
141 showing of the female breast below a horizontal line across
142 the top of the areola and extending across the width of the
143 breast at such point, or the showing of the male or female
144 buttocks. Such definition includes the lower portion of the
145 human female breast, but shall not include any portion of
146 the cleavage of the female breasts exhibited by a bikini,
147 dress, blouse, shirt, leotard, or similar wearing apparel
148 provided the areola is not exposed in whole or in part;

149 [(20)] (22) "Sexual conduct", actual or simulated,
150 normal or perverted acts of human masturbation; deviate
151 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)] (23) "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)] (24) "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 photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. A principal business activity exists where the commercial establishment:

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

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

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

186 d. Derives a substantial portion of its revenues from
187 the sale or rental, for any form of consideration, of such
188 items; or

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

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

201 (b) An adult cabaret;

202 (c) An adult motion picture theater. "Adult motion
203 picture theater" means a commercial establishment where
204 films, motion pictures, video cassettes, slides, or similar
205 photographic reproductions, which are characterized by their
206 emphasis upon the display of specified sexual activities or
207 specified anatomical areas are regularly shown to more than
208 five persons for any form of consideration;

209 (d) A semi-nude model studio. "Semi-nude model
210 studio" means a place where persons regularly appear in a
211 state of semi-nudity for money or any form of consideration
212 in order to be observed, sketched, drawn, painted,
213 sculptured, photographed, or similarly depicted by other
214 persons. Such definition shall not apply to any place where

215 persons appearing in a state of semi-nudity do so in a
216 modeling class operated:

217 a. By a college, junior college, or university
218 supported entirely or partly by taxation;

219 b. By a private college or university which maintains
220 and operates educational programs in which credits are
221 transferable to a college, junior college, or university
222 supported entirely or partly by taxation; or

223 c. In a structure:

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

227 (ii) Where, in order to participate in a class, a
228 student must enroll at least three days in advance of the
229 class;

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

236 **(f) A nightclub, bar, restaurant, or similar**
237 **commercial enterprise that provides an audience of two or**
238 **more individuals a drag performance;**

239 [(23)] (25) "Sexual performance", any performance, or
240 part thereof, which includes sexual conduct by a child who
241 is less than eighteen years of age;

242 [(24)] (26) "Specified anatomical areas" include:

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

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

248 [(25)] (27) "Specified sexual activity", includes any
249 of the following:

250 (a) Intercourse, oral copulation, masturbation, or
251 sodomy; or

252 (b) Excretory functions as a part of or in connection
253 with any of the activities described in paragraph (a) of
254 this subdivision;

255 [(26)] (28) "Substantial", at least thirty percent of
256 the item or items so modified;

257 [(27)] (29) "Visual depiction", includes undeveloped
258 film and videotape, and data stored on computer disk or by
259 electronic means which is capable of conversion into a
260 visual image.

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