

FIRST REGULAR SESSION

HOUSE BILL NO. 321

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES EMERY (Sponsor), NIEVES, NANCE, BIVINS, RUESTMAN, DIXON, SCHOELLER, BURLISON, WOOD, WRIGHT, WILSON (130), RICHARD, FLANIGAN, ERVIN, FRANZ, STEVENSON, JONES (89), COOPER, DAVIS, FUNDERBURK, FAITH, SATER, JONES (117), SANDER, THOMSON, STREAM, ICET AND LARGENT (Co-sponsors).

0840L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 573, RSMo, by adding thereto six 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. Chapter 573, RSMo, is amended by adding thereto six new sections, to be known as sections 573.525, 573.528, 573.531, 573.534, 573.537, and 573.540, to read as follows:

573.525. 1. It is the purpose of sections 573.525 to 573.537 to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of this state, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the state. The provisions of sections 573.525 to 573.537 have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of sections 573.525 to 573.537 to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of sections 573.525 to 573.537 to condone or legitimize the distribution of obscene material.

2. The general assembly finds that:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (1) Sexually oriented businesses, as a category of commercial enterprises, are
15 associated with a wide variety of adverse secondary effects, including but not limited to
16 personal and property crimes, prostitution, potential spread of disease, lewdness, public
17 indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding
18 properties, urban blight, litter, and sexual assault and exploitation;

19 (2) Sexually oriented businesses should be separated from sensitive land uses to
20 minimize the impact of their secondary effects upon such uses, and should be separated
21 from other sexually oriented businesses, to minimize the secondary effects associated with
22 such uses and to prevent an unnecessary concentration of sexually oriented businesses in
23 one area;

24 (3) Each of the foregoing negative secondary effects constitutes a harm which the
25 state has a substantial interest in preventing and/or abating. Such substantial government
26 interest in preventing secondary effects, which is the state's rationale for sections 573.525
27 to 573.537, exists independent of any comparative analysis between sexually oriented and
28 nonsexually oriented businesses. Additionally, the state's interest in regulating sexually
29 oriented businesses extends to preventing future secondary effects of current or future
30 sexually oriented businesses that may locate in the state.

 573.528. For purposes of sections 573.525 to 573.537, the following terms shall
2 mean:

3 (1) "Adult bookstore" or "adult video store", a commercial establishment which,
4 as one of its principal business activities, offers for sale or rental for any form of
5 consideration any one or more of the following: books, magazines, periodicals, or other
6 printed matter, or photographs, films, motion pictures, video cassettes, compact discs,
7 digital video discs, slides, or other visual representations which are characterized by their
8 emphasis upon the display of specified sexual activities or specified anatomical areas. A
9 "principal business activity" exists where the commercial establishment:

10 (a) Has a substantial portion of its displayed merchandise which consists of such
11 items; or

12 (b) Has a substantial portion of the wholesale value of its displayed merchandise
13 which consists of such items; or

14 (c) Has a substantial portion of the retail value of its displayed merchandise which
15 consists of such items; or

16 (d) Derives a substantial portion of its revenues from the sale or rental, for any
17 form of consideration of such items; or

18 (e) Maintains a substantial section of its interior business space for the sale or
19 rental of such items; or

20 (f) Maintains an adult arcade. "Adult arcade" means any place to which the public
21 is permitted or invited wherein coin-operated or slug-operated or electronically,
22 electrically, or mechanically controlled still or motion picture machines, projectors, or
23 other image-producing devices are regularly maintained to show images to five or fewer
24 persons per machine at any one time, and where the images so displayed are characterized
25 by their emphasis upon matter exhibiting specified sexual activities or specified anatomical
26 areas;

27 (2) "Adult cabaret", a nightclub, bar, juice bar, restaurant, bottle club, or other
28 commercial establishment, regardless of whether alcoholic beverages are served, which
29 regularly features persons who appear semi-nude;

30 (3) "Adult motion picture theater", a commercial establishment where films,
31 motion pictures, video cassettes, slides, or similar photographic reproductions which are
32 characterized by their emphasis upon the display of specified sexual activities or specified
33 anatomical areas are regularly shown to more than five persons for any form of
34 consideration;

35 (4) "Characterized by", describing the essential character or dominant theme of
36 an item. As applied in sections 573.525 to 573.537, no business shall be classified as a
37 sexually oriented business by virtue of showing, selling, or renting materials rated NC-17
38 or R by the Motion Picture Association of America;

39 (5) "Employ", "employee" or "employment", describe and pertain to any person
40 who performs any service on the premises of a sexually oriented business, on a full-time,
41 part-time, or contract basis, whether or not the person is denominated an employee,
42 independent contractor, agent, or otherwise. Employee does not include a person
43 exclusively on the premises for repair or maintenance of the premises or for the delivery
44 of goods to the premises;

45 (6) "Establish" or "establishment", any of the following:

46 (a) The opening or commencement of any sexually oriented business as a new
47 business;

48 (b) The conversion of an existing business, whether or not a sexually oriented
49 business, to any sexually oriented business; or

50 (c) The addition of any sexually oriented business to any other existing sexually
51 oriented business;

52 (7) "Influential interest", any of the following:

53 (a) The actual power to operate the sexually oriented business or control the
54 operation, management, or policies of the sexually oriented business or legal entity which
55 operates the sexually oriented business;

56 (b) Ownership of a financial interest of thirty percent or more of a business or of
57 any class of voting securities of a business; or

58 (c) Holding an office, such as president, vice president, secretary, treasurer,
59 managing member, or managing director, in a legal entity which operates the sexually
60 oriented business;

61 (8) "Nudity" or "state of nudity", the showing of the human male or female
62 genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque
63 covering, or the showing of the female breast with less than a fully opaque covering of any
64 part of the nipple or areola;

65 (9) "Operator", any person on the premises of a sexually oriented business who
66 causes the business to function or who puts or keeps in operation the business or who is
67 authorized to manage the business or exercise overall operational control of the business
68 premises. A person may be found to be operating or causing to be operated a sexually
69 oriented business whether or not such person is an owner, part owner, or licensee of the
70 business;

71 (10) "Premises", the real property upon which the sexually oriented business is
72 located, and all appurtenances thereto and buildings thereon, including but not limited to
73 the sexually oriented business, the grounds, private walkways, and parking lots and/or
74 parking garages adjacent thereto, under the ownership, control, or supervision of the
75 licensee, as described in the application for a sexually oriented business license;

76 (11) "Regularly", the consistent and repeated doing of the act so described;

77 (12) "Semi-nude" or "state of semi-nudity", the showing of the female breast below
78 a horizontal line across the top of the areola and extending across the width of the breast
79 at such point, or the showing of the male or female buttocks. Such definition includes the
80 lower portion of the human female breast, but shall not include any portion of the cleavage
81 of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar
82 wearing apparel provided the areola is not exposed in whole or in part;

83 (13) "Semi-nude model studio", a place where persons regularly appear in a state
84 of semi-nudity for money or any form of consideration in order to be observed, sketched,
85 drawn, painted, sculptured, photographed, or similarly depicted by other persons. Such
86 definition does not apply to any place where persons appearing in a state of semi-nudity
87 did so in a modeling class operated:

88 (a) By a college, junior college, or university supported entirely or partly by
89 taxation;

90 (b) By a private college or university which maintains and operates educational
91 programs in which credits are transferable to a college, junior college, or university
92 supported entirely or partly by taxation; or

93 (c) In a structure:

94 a. Which has no sign visible from the exterior of the structure and no other
95 advertising that indicates a semi-nude person is available for viewing; and

96 b. Where, in order to participate in a class, a student must enroll at least three days
97 in advance of the class;

98 (14) "Sexual encounter center", a business or commercial enterprise that, as one
99 of its principal purposes, purports to offer for any form of consideration, physical contact
100 in the form of wrestling or tumbling between persons of the opposite sex when one or more
101 of the persons is semi-nude;

102 (15) "Sexually oriented business", an adult bookstore or adult video store, an adult
103 cabaret, an adult motion picture theater, a semi-nude model studio, or a sexual encounter
104 center;

105 (16) "Specified anatomical areas":

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

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

110 (17) "Specified criminal act", any of the following specified offenses for which less
111 than eight years has elapsed since the date of conviction or the date of release from
112 confinement for the conviction, whichever is later:

113 (a) Rape and sexual assault offenses;

114 (b) Sexual offenses involving minors;

115 (c) Offenses involving prostitution;

116 (d) Obscenity offenses;

117 (e) Offenses involving money laundering;

118 (f) Offenses involving tax evasion;

119 (g) Any attempt, solicitation, or conspiracy to commit one of the offenses listed in
120 paragraphs (a) to (f) of this subdivision; or

121 (h) Any offense committed in another jurisdiction which if committed in this state
122 would have constituted an offense listed in paragraphs (a) to (g) of this subdivision;

123 (18) "Specified sexual activity", any of the following:

124 (a) Intercourse, oral copulation, masturbation, or sodomy; or

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

(19) "Substantial", at least thirty percent of the item or items so modified;

(20) "Viewing room", the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, video cassette, digital video disc, or other video reproduction.

573.531. 1. No person shall establish a sexually oriented business within one thousand feet of any preexisting primary or secondary school, house of worship, state-licensed day care facility, public library, public park, residence, or other sexually oriented business. This subsection shall not apply to any sexually oriented business lawfully established prior to the effective date of sections 573.525 to 573.537. For purposes of this subsection, measurements shall be made in a straight line, without regard to intervening structures or objects, from the closest portion of the parcel containing the sexually oriented business to the closest portion of the parcel containing the preexisting primary or secondary school, house of worship, state-licensed day care facility, public library, public park, residence, or other sexually oriented business.

2. No person shall establish a sexually oriented business if a person with an influential interest in the sexually oriented business has been convicted of or pled guilty or nolo contendere to a specified criminal act.

3. No person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity.

4. No employee shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the employee, while semi-nude, shall be and remain on a fixed stage at least six feet from all patrons and at least eighteen inches from the floor in a room of at least six hundred square feet.

5. No employee who appears in a semi-nude condition in a sexually oriented business shall knowingly or intentionally touch a patron or the clothing of a patron in a sexually oriented business.

6. A sexually oriented business which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose;

31 (2) An operator's station shall not exceed thirty-two square feet of floor area;

32 (3) If the premises has two or more operator's stations designated, the interior of
33 the premises shall be configured in such a manner that there is an unobstructed view of
34 each area of the premises to which any patron is permitted access for any purpose from at
35 least one of the operator's stations;

36 (4) The view required under this subsection shall be by direct line of sight from the
37 operator's station;

38 (5) It is the duty of the operator to ensure that at least one employee is on duty and
39 situated in an operator's station at all times that any patron is on the portion of the
40 premises monitored by such operator station; and

41 (6) It shall be the duty of the operator and of any employees present on the
42 premises to ensure that the view area specified in this subsection remains unobstructed by
43 any doors, curtains, walls, merchandise, display racks, or other materials or enclosures at
44 all times that any patron is present on the premises.

45 7. Sexually oriented businesses that do not have stages or interior configurations
46 which meet at least the minimum requirements of sections 573.525 to 573.537 shall be given
47 one hundred eighty days after the effective date of sections 573.525 to 573.537 to comply
48 with the stage and building requirements of sections 573.525 to 573.537. During such one-
49 hundred-eighty-day period, any employee who appears within view of any patron in a
50 semi-nude condition shall remain, while semi-nude, at least six feet from all patrons.

51 8. No operator shall allow or permit a sexually oriented business to be or remain
52 open between the hours of 12:00 midnight and 6:00 a.m. on any day.

53 9. No person shall knowingly or intentionally sell, use, or consume alcoholic
54 beverages on the premises of a sexually oriented business.

55 10. No person shall knowingly allow a person under the age of eighteen years on
56 the premises of a sexually oriented business.

 573.534. Sections 573.525 to 573.537 do not impose strict liability. Unless a culpable
2 mental state is otherwise specified herein, a showing of a knowing or reckless mental state
3 is necessary to establish a violation of sections 573.525 to 573.537. Notwithstanding any
4 other provision of law to the contrary, for purposes of sections 573.525 to 573.537, an act
5 by an employee shall be imputed to the sexually oriented business for purposes of finding
6 a violation of sections 573.525 to 573.537 only if an officer, director, or general partner, or
7 a person who managed, supervised, or controlled the operation of the business premises
8 knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to
9 liability that the person to whom liability is imputed was powerless to prevent the act.

2 **573.537. 1. Any person, business, or entity violating or refusing to comply with any**
3 **provision of sections 573.525 to 573.537 shall, upon conviction, be deemed guilty of a**
4 **misdemeanor and shall be punished by imposition of a fine not to exceed five hundred**
5 **dollars or by imprisonment for a period not to exceed ninety days, or both. Each day that**
6 **a violation is permitted to exist or occur, and each separate occurrence shall constitute a**

7 **2. Any premises, building, dwelling, or other structure in which a sexually oriented**
8 **business is repeatedly operated or maintained in violation of sections 573.525 to 573.537**
9 **shall constitute a public nuisance and shall be subject to civil abatement proceedings**
10 **initiated by the state in a court of competent jurisdiction. Each day that a violation is**
11 **permitted to exist or occur shall constitute a separate operation or maintenance of the**
12 **violation.**

13 **3. Notwithstanding the provisions of this section, the state may employ any remedy**
14 **available at law or in equity to prevent or remedy a violation of any provision of sections**
15 **573.525 to 573.537.**

2 **573.540. Nothing in sections 573.525 to 573.537 shall preempt or prevent any**
3 **political subdivision in this state from maintaining, enacting, or enforcing any local**
4 **ordinance, rule, regulation, resolution, or similar law concerning the regulation of sexually**
5 **oriented businesses or similar adult oriented businesses.**

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