

FIRST REGULAR SESSION

# HOUSE BILL NO. 494

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BAKER.

0693H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 573.010, RSMo, and to enact in lieu thereof two new sections relating to the offense of engaging in an adult cabaret performance, with penalty provisions.

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

Section A. Section 573.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 573.010 and 573.520, to read as follows:

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

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

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

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

~~(3)~~ (4) "Child", any person under the age of fourteen;

~~(4)~~ (5) "Child pornography":

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

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.

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

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

21 b. Such visual depiction is a digital image, computer image, or computer-generated  
22 image that is, or is indistinguishable from, that of a minor engaging in sexually explicit  
23 conduct, in that the depiction is such that an ordinary person viewing the depiction would  
24 conclude that the depiction is of an actual minor engaged in sexually explicit conduct; or

25 c. Such visual depiction has been created, adapted, or modified to show that an  
26 identifiable minor is engaging in sexually explicit conduct. "Identifiable minor" means a  
27 person who was a minor at the time the visual depiction was created, adapted, or modified; or  
28 whose image as a minor was used in creating, adapting, or modifying the visual depiction;  
29 and who is recognizable as an actual person by the person's face, likeness, or other  
30 distinguishing characteristic, such as a unique birthmark or other recognizable feature. The  
31 term identifiable minor shall not be construed to require proof of the actual identity of the  
32 identifiable minor;

33 ~~[(5)]~~ (6) "Employ", "employee", or "employment", any person who performs any  
34 service on the premises of a sexually oriented business, on a full-time, part-time, or contract  
35 basis, whether or not the person is denominated an employee, independent contractor, agent,  
36 or otherwise. Employee does not include a person exclusively on the premises for repair or  
37 maintenance of the premises or for the delivery of goods to the premises;

38 ~~[(6)]~~ (7) "Explicit sexual material", any pictorial or three-dimensional material  
39 depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical  
40 stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of  
41 postpubertal human genitals; provided, however, that works of art or of anthropological  
42 significance shall not be deemed to be within the foregoing definition;

43 ~~[(7)]~~ (8) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate,  
44 disseminate, present, exhibit or otherwise provide;

45 ~~[(8)]~~ (9) "Material", anything printed or written, or any picture, drawing, photograph,  
46 motion picture film, videotape or videotape production, or pictorial representation, or any  
47 recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored  
48 computer data, or anything which is or may be used as a means of communication. Material  
49 includes undeveloped photographs, molds, printing plates, stored computer data and other  
50 latent representational objects;

51 ~~[(9)]~~ (10) "Minor", any person less than eighteen years of age;

52           ~~[(10)]~~ **(11)** "Nudity" or "state of nudity", the showing of the human genitals, pubic  
53 area, vulva, anus, anal cleft, or the female breast with less than a fully opaque covering of any  
54 part of the nipple or areola;

55           ~~[(11)]~~ **(12)** "Obscene", any material or performance if, taken as a whole:

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

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

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

62           ~~[(12)]~~ **(13)** "Operator", any person on the premises of a sexually oriented business  
63 who causes the business to function, puts or keeps the business in operation, or is authorized  
64 to manage the business or exercise overall operational control of the business premises. A  
65 person may be found to be operating or causing to be operated a sexually oriented business  
66 whether or not such person is an owner, part owner, or licensee of the business;

67           ~~[(13)]~~ **(14)** "Performance", any play, motion picture film, videotape, dance or  
68 exhibition performed before an audience of one or more;

69           ~~[(14)]~~ **(15)** "Pornographic for minors", any material or performance if the following  
70 apply:

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

74           (b) The material or performance depicts or describes nudity, sexual conduct, the  
75 condition of human genitals when in a state of sexual stimulation or arousal, or  
76 sadomasochistic abuse in a way which is patently offensive to the average person applying  
77 contemporary adult community standards with respect to what is suitable for minors; and

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

80           ~~[(15)]~~ **(16)** "Premises", the real property upon which a sexually oriented business is  
81 located, and all appurtenances thereto and buildings thereon, including but not limited to the  
82 sexually oriented business, the grounds, private walkways, and parking lots or parking  
83 garages or both;

84           ~~[(16)]~~ **(17)** "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer,  
85 transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer  
86 or agree to do the same, by any means including a computer;

87           ~~[(17)]~~ **(18)** "Regularly", the consistent and repeated doing of the act so described;

88           ~~[(18)]~~ **(19)** "Sadomasochistic abuse", flagellation or torture by or upon a person as an  
89 act of sexual stimulation or gratification;

90           ~~[(19)]~~ **(20)** "Semi-nude" or "state of semi-nudity", the showing of the female breast  
91 below a horizontal line across the top of the areola and extending across the width of the  
92 breast at such point, or the showing of the male or female buttocks. Such definition includes  
93 the lower portion of the human female breast, but shall not include any portion of the  
94 cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar  
95 wearing apparel provided the areola is not exposed in whole or in part;

96           ~~[(20)]~~ **(21)** "Sexual conduct", actual or simulated, normal or perverted acts of human  
97 masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a  
98 person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act  
99 of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including  
100 animals or any latent objects in an act of apparent sexual stimulation or gratification;

101           ~~[(21)]~~ **(22)** "Sexually explicit conduct", actual or simulated:

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

104           (b) Bestiality;

105           (c) Masturbation;

106           (d) Sadistic or masochistic abuse; or

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

108           ~~[(22)]~~ **(23)** "Sexually oriented business" includes:

109           (a) An adult bookstore or adult video store. "Adult bookstore" or "adult video store"  
110 means a commercial establishment which, as one of its principal business activities, offers for  
111 sale or rental for any form of consideration any one or more of the following: books,  
112 magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video  
113 cassettes, compact discs, digital video discs, slides, or other visual representations which are  
114 characterized by their emphasis upon the display of specified sexual activities or specified  
115 anatomical areas. A principal business activity exists where the commercial establishment:  
116           a. Has a substantial portion of its displayed merchandise which consists of such  
117 items; or

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

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

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

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

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

132 (b) An adult cabaret;

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

138 (d) A semi-nude model studio. "Semi-nude model studio" means a place where  
139 persons regularly appear in a state of semi-nudity for money or any form of consideration in  
140 order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly  
141 depicted by other persons. Such definition shall not apply to any place where persons  
142 appearing in a state of semi-nudity do so in a modeling class operated:

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

144 b. By a private college or university which maintains and operates educational  
145 programs in which credits are transferable to a college, junior college, or university supported  
146 entirely or partly by taxation; or

147 c. In a structure:

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

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

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

156 ~~[(23)]~~ (24) "Sexual performance", any performance, or part thereof, which includes  
157 sexual conduct by a child who is less than eighteen years of age;

158 ~~[(24)]~~ (25) "Specified anatomical areas" include:

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

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

163 [~~(25)~~] (26) "Specified sexual activity", includes any of the following:

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

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

167 [~~(26)~~] (27) "Substantial", at least thirty percent of the item or items so modified;

168 [~~(27)~~] (28) "Visual depiction", includes undeveloped film and videotape, and data  
169 stored on computer disk or by electronic means which is capable of conversion into a visual  
170 image.

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

3 **(1) On public property; or**

4 **(2) In a location where the adult cabaret performance could be viewed by a  
5 person who is not an adult.**

6 **2. The offense of engaging in an adult cabaret performance is a class A  
7 misdemeanor for a first offense and a class E felony for any second or subsequent  
8 offense.**

9 **3. The provisions of this section shall:**

10 **(1) Preempt an ordinance or a regulation, restriction, or license that was lawfully  
11 adopted or issued by a political subdivision prior to August 28, 2023, if such ordinance,  
12 regulation, restriction, or license conflicts with this section; and**

13 **(2) Prevent or preempt a political subdivision from enacting and enforcing in the  
14 future other ordinances, regulations, restrictions, or licenses that are in conflict with this  
15 section.**

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