

FIRST REGULAR SESSION

HOUSE BILL NO. 498

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BOYD.

1219H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Sections 67.2540, 226.531, and 573.010, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 67.2540, 226.531, and 573.010,
3 to read as follows:

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

2 (1) "Adult cabaret", a nightclub, bar, restaurant, or similar establishment in which
3 persons regularly appear in a state of nudity, as defined in section 573.500, or seminudity in
4 the performance of their duties;

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

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

13 (4) "Employee", a person who is at least twenty-one years of age and who performs
14 any service on the premises of a sexually oriented business on a full-time, part-time, or
15 contract basis, whether or not the person is denominated an employee, independent
16 contractor, agent, or otherwise, and whether or not said person is paid a salary, wage, or other

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.

17 compensation by the operator of said business. The term employee does not include a person
18 exclusively on the premises for repair or maintenance of the premises or equipment on the
19 premises, or for the delivery of goods to the premises;

20 ~~[(3)]~~ (5) "Nudity" or a "state of nudity", the showing of the human male or female
21 genitals, pubic area, vulva, anus, anal cleft or anal cleavage with less than a fully opaque
22 covering, the showing of the female breast with less than a fully opaque covering of any part
23 of the nipple, or the showing of the covered male genitals in a discernibly turgid state;

24 ~~[(4)]~~ (6) "Nuisance", any place in or upon which lewdness, assignation, or
25 prostitution is conducted, permitted, continued, or exists, or any place, in or upon which lewd,
26 indecent, lascivious, or obscene films, or films designed to be projected for exhibition, are
27 photographed, manufactured, developed, screened, exhibited, or otherwise prepared or
28 shown, and the personal property and contents used in conducting and maintaining any such
29 place for any such purpose. The provisions of this section shall not affect any newspaper,
30 magazine, or other publication entered as second class matter by the post office department;

31 ~~[(5)]~~ (7) "Person", an individual, proprietorship, partnership, corporation, association,
32 or other legal entity;

33 ~~[(6)]~~ (8) "Seminude" or in a "seminude condition", a state of dress in which opaque
34 clothing fails to cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple and
35 areola of the female breast below a horizontal line across the top of the areola at its highest
36 point. Seminudity shall include the entire lower portion of the female breast, but shall not
37 include any portion of the cleavage of the human female breast exhibited by wearing apparel
38 provided the areola is not exposed in whole or part;

39 ~~[(7)]~~ (9) "Sexually oriented business", an adult cabaret or any business which offers
40 its patrons goods of which a substantial or significant portion are sexually oriented material
41 **or any nightclub, bar, restaurant, or similar commercial enterprise that provides an**
42 **audience of two or more individuals a drag performance.** It shall be presumed that a
43 business that derives thirty percent or less of its revenue from sexually oriented materials is
44 presumed not to be a sexually oriented business. No building, premises, structure, or other
45 facility that contains any sexually oriented business shall contain any other kind of sexually
46 oriented business;

47 ~~[(8)]~~ (10) "Sexually oriented materials", any pictorial or three-dimensional material,
48 or film, motion picture, DVD, video cassette, or similar photographic reproduction, that
49 depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as defined in
50 section 573.010;

51 ~~[(9)]~~ (11) "Specified criminal activity" includes the following offenses:

52 (a) Prostitution or promotion of prostitution; dissemination of obscenity; sale,
53 distribution, or display of harmful material to a minor; sexual performance by a child;

54 possession or distribution of child pornography; public lewdness; indecent exposure;
55 indecency with a child; engaging in organized criminal activity; sexual assault; molestation of
56 a child; gambling prohibited under Missouri law; or distribution of a controlled substance; or
57 any similar offenses described in this subdivision under the criminal or penal code of other
58 states or countries;

59 (b) For which:

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

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

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

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

72 ~~[(10)]~~ (12) "Specified sexual activities" includes the following acts:

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

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

77 (c) Excretory functions as part of or in connection with any of the activities set forth
78 in this subdivision.

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

2 (1) "Adult cabaret", a nightclub, bar, restaurant, or similar establishment in which
3 persons appear in a state of nudity, as defined in section 573.500, or seminudity, in the
4 performance of their duties;

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

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

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

19 ~~[(3)]~~ (5) "Sexually oriented business", any business which offers its patrons goods of
20 which a substantial portion are sexually oriented materials **or any nightclub, bar,**
21 **restaurant, or similar commercial enterprise that provides an audience of two or**
22 **more individuals a drag performance.** Any business where more than ten percent of
23 display space is used for sexually oriented materials shall be presumed to be a sexually
24 oriented business;

25 ~~[(4)]~~ (6) "Sexually oriented materials", any textual, pictorial, or three-dimensional
26 material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a
27 way which is patently offensive to the average person applying contemporary adult
28 community standards with respect to what is suitable for minors.

29 2. No billboard or other exterior advertising sign for an adult cabaret or sexually
30 oriented business shall be located within one mile of any state highway except if such
31 business is located within one mile of a state highway then the business may display a
32 maximum of two exterior signs on the premises of the business, consisting of one
33 identification sign and one sign solely giving notice that the premises are off limits to minors.
34 The identification sign shall be no more than forty square feet in size and shall include no
35 more than the following information: name, street address, telephone number, and operating
36 hours of the business.

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

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

43 5. This section is designed to protect the following public policy interests of this state,
44 including but not limited to: to mitigate the adverse secondary effects of sexually oriented
45 businesses, to improve traffic safety, to limit harm to minors, and to reduce prostitution,
46 crime, juvenile delinquency, deterioration in property values, and lethargy in neighborhood
47 improvement efforts.

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

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

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

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

11 [~~3~~] (4) "Child", any person under the age of fourteen;

12 [~~4~~] (5) "Child pornography":

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

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

37 (7) "Employ", "employee", or "employment", any person who performs any service
38 on the premises of a sexually oriented business, on a full-time, part-time, or contract basis,

39 whether or not the person is denominated an employee, independent contractor, agent, or
40 otherwise. Employee does not include a person exclusively on the premises for repair or
41 maintenance of the premises or for the delivery of goods to the premises;

42 ~~[(6)]~~ **(8)** "Explicit sexual material", any pictorial or three-dimensional material
43 depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical
44 stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of
45 postpubertal human genitals; provided, however, that works of art or of anthropological
46 significance shall not be deemed to be within the foregoing definition;

47 ~~[(7)]~~ **(9)** "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate,
48 disseminate, present, exhibit or otherwise provide;

49 ~~[(8)]~~ **(10)** "Material", anything printed or written, or any picture, drawing,
50 photograph, motion picture film, videotape or videotape production, or pictorial
51 representation, or any recording or transcription, or any mechanical, chemical, or electrical
52 reproduction, or stored computer data, or anything which is or may be used as a means of
53 communication. Material includes undeveloped photographs, molds, printing plates, stored
54 computer data and other latent representational objects;

55 ~~[(9)]~~ **(11)** "Minor", any person less than eighteen years of age;

56 ~~[(10)]~~ **(12)** "Nudity" or "state of nudity", the showing of the human genitals, pubic
57 area, vulva, anus, anal cleft, or the female breast with less than a fully opaque covering of any
58 part of the nipple or areola;

59 ~~[(11)]~~ **(13)** "Obscene", any material or performance if, taken as a whole:

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

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

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

66 ~~[(12)]~~ **(14)** "Operator", any person on the premises of a sexually oriented business
67 who causes the business to function, puts or keeps the business in operation, or is authorized
68 to manage the business or exercise overall operational control of the business premises. A
69 person may be found to be operating or causing to be operated a sexually oriented business
70 whether or not such person is an owner, part owner, or licensee of the business;

71 ~~[(13)]~~ **(15)** "Performance", any play, motion picture film, videotape, dance or
72 exhibition performed before an audience of one or more;

73 ~~[(14)]~~ **(16)** "Pornographic for minors", any material or performance if the following
74 apply:

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

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

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

84 ~~[(15)]~~ (17) "Premises", the real property upon which a sexually oriented business is
85 located, and all appurtenances thereto and buildings thereon, including but not limited to the
86 sexually oriented business, the grounds, private walkways, and parking lots or parking
87 garages or both;

88 ~~[(16)]~~ (18) "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer,
89 transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer
90 or agree to do the same, by any means including a computer;

91 ~~[(17)]~~ (19) "Regularly", the consistent and repeated doing of the act so described;

92 ~~[(18)]~~ (20) "Sadomasochistic abuse", flagellation or torture by or upon a person as an
93 act of sexual stimulation or gratification;

94 ~~[(19)]~~ (21) "Semi-nude" or "state of semi-nudity", the showing of the female breast
95 below a horizontal line across the top of the areola and extending across the width of the
96 breast at such point, or the showing of the male or female buttocks. Such definition includes
97 the lower portion of the human female breast, but shall not include any portion of the
98 cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar
99 wearing apparel provided the areola is not exposed in whole or in part;

100 ~~[(20)]~~ (22) "Sexual conduct", actual or simulated, normal or perverted acts of human
101 masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a
102 person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act
103 of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including
104 animals or any latent objects in an act of apparent sexual stimulation or gratification;

105 ~~[(21)]~~ (23) "Sexually explicit conduct", actual or simulated:

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

108 (b) Bestiality;

109 (c) Masturbation;

110 (d) Sadistic or masochistic abuse; or

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

112 ~~[(22)]~~ (24) "Sexually oriented business" includes:

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

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

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

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

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

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

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

136 (b) An adult cabaret;

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

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

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

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

151 c. In a structure:

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

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

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

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

162 ~~[(23)]~~ **(25)** "Sexual performance", any performance, or part thereof, which includes
163 sexual conduct by a child who is less than eighteen years of age;

164 ~~[(24)]~~ **(26)** "Specified anatomical areas" include:

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

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

169 ~~[(25)]~~ **(27)** "Specified sexual activity", includes any of the following:

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

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

173 ~~[(26)]~~ **(28)** "Substantial", at least thirty percent of the item or items so modified;

174 ~~[(27)]~~ **(29)** "Visual depiction", includes undeveloped film and videotape, and data
175 stored on computer disk or by electronic means which is capable of conversion into a visual
176 image.

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