

HOUSE BILL NO. 1364

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOK.

2626H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 573.010, RSMo, and to enact in lieu thereof three new sections relating to offenses involving the viewing of certain activities, with penalty provisions.

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

Section A. Section 573.010, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 573.010, 573.521, and 573.522, to read as follows: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 that appeals to a prurient interest in a location other than an adult cabaret and that features topless dancers, go-go dancers, exotic dancers, strippers, drag queens, or similar entertainers who provide entertainment, regardless of whether the performance is 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) "Drag queen", a male or female performer who adopts a flamboyant or**
34 **parodic feminine persona with glamorous or exaggerated costumes and makeup;**

35 **(7) "Drag queen story hour", an event hosted by a drag queen who reads**
36 **children's books and engages in other learning activities with minor children present;**

37 **(8) "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)]~~ **(9) "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)]~~ **(10) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer,**
48 **circulate, disseminate, present, exhibit or otherwise provide;**

49 ~~[(8)]~~ **(11) "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)]~~ **(12)** "Minor", any person less than eighteen years of age;

56 ~~[(10)]~~ **(13)** "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)]~~ **(14)** "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)]~~ **(15)** "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)]~~ **(16)** "Performance", any play, motion picture film, videotape, dance or
72 exhibition performed before an audience of one or more;

73 ~~[(14)]~~ **(17)** "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)]~~ **(18)** "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)]~~ **(19)** "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)]~~ **(20)** "Regularly", the consistent and repeated doing of the act so described;

92 ~~[(18)]~~ **(21)** "Sadomasochistic abuse", flagellation or torture by or upon a person as an
93 act of sexual stimulation or gratification;

94 ~~[(19)]~~ **(22)** "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)]~~ **(23)** "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)]~~ **(24)** "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)]~~ **(25)** "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;

160 ~~[(23)]~~ **(26)** "Sexual performance", any performance, or part thereof, which includes
161 sexual conduct by a child who is less than eighteen years of age;

162 ~~[(24)]~~ **(27)** "Specified anatomical areas" include:

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

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

167 ~~[(25)]~~ **(28)** "Specified sexual activity", includes any of the following:

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

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

171 ~~[(26)]~~ **(29)** "Substantial", at least thirty percent of the item or items so modified;

172 ~~[(27)]~~ **(30)** "Visual depiction", includes undeveloped film and videotape, and data
173 stored on computer disk or by electronic means which is capable of conversion into a visual
174 image.

**573.521. 1. A person commits the offense of engaging in an adult cabaret
2 performance or organizing or authorizing the viewing of an adult cabaret performance
3 if such performance is:**

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

5 **(2) In a location where the adult cabaret performance could be viewed by a
6 person who is a minor.**

7 **2. The offense of engaging in an adult cabaret performance or organizing or
8 authorizing the viewing of an adult cabaret performance is a class A misdemeanor.**

9 **3. The provisions of this section shall preempt any ordinance, regulation,
10 restriction, or license that was lawfully adopted or issued by a political subdivision prior
11 to August 28, 2023, if such ordinance, regulation, restriction, or license conflicts with the
12 provisions of this section.**

13 **4. If a school district or charter school, or an employee or a volunteer of the
14 school district or charter school while in the performance of the employee's or
15 volunteer's duties on behalf of the school district or charter school, violates the
16 provisions of this section, in each school year, the department of elementary and
17 secondary education shall withhold from the school district or charter school a
18 percentage of any monthly distribution of state formula funding and any other revenues
19 from the state that are distributed to such school district or charter school. The
20 department shall withhold such distributions for the month in which the violation
21 occurs and all months remaining in the school year in which the violation occurs in the
22 following percentages:**

- 23 **(1) For the first violation, twenty-five percent;**
- 24 **(2) For the second violation, fifty percent; and**
- 25 **(3) For the third and subsequent violations, one hundred percent.**

2 **573.522. 1. A person commits the offense of organizing or authorizing the**
3 **viewing of a drag queen story hour if such viewing is:**

- 3 **(1) On public property; or**
- 4 **(2) In a location where the drag queen story hour could be viewed by a person**
5 **who is a minor.**

6 **2. The offense of organizing or authorizing the viewing of a drag queen story**
7 **hour is a class A misdemeanor.**

8 **3. The provisions of this section shall preempt any ordinance, regulation,**
9 **restriction, or license that was lawfully adopted or issued by a political subdivision prior**
10 **to August 28, 2023, if such ordinance, regulation, restriction, or license conflicts with the**
11 **provisions of this section.**

12 **4. If a school district or charter school, or an employee or a volunteer of the**
13 **school district or charter school while in the performance of the employee's or**
14 **volunteer's duties on behalf of the school district or charter school, violates the**
15 **provisions of this section, in each school year, the department of elementary and**
16 **secondary education shall withhold from the school district or charter school a**
17 **percentage of any monthly distribution of state formula funding and any other revenues**
18 **from the state that are distributed to such school district or charter school. The**
19 **department shall withhold such distributions for the month in which the violation**
20 **occurs and all months remaining in the school year in which the violation occurs in the**
21 **following percentages:**

- 22 **(1) For the first violation, twenty-five percent;**
- 23 **(2) For the second violation, fifty percent; and**
- 24 **(3) For the third and subsequent violations, one hundred percent.**

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