

SECOND REGULAR SESSION

HOUSE BILL NO. 2529

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EALY.

6332H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 573.010 and 573.550, RSMo, and to enact in lieu thereof two new sections relating to artificially generated visual depictions of a minor, with penalty provisions.

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

Section A. Sections 573.010 and 573.550, RSMo, are repealed and two new sections 2 enacted in lieu thereof, to be known as sections 573.010 and 573.550, to read as follows:
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) "Artificially generated visual depiction", includes depictions that are obscene
6 and indistinguishable from a real minor, morphed from a real minor's image, or
7 generated without any actual minor involvement;
8 (3) "Characterized by", describing the essential character or dominant theme of an
9 item;
10 [(3)] (4) "Child", any person under the age of fourteen;
11 [(4)] (5) "Child pornography":
12 (a) Any obscene material or performance depicting sexual conduct, sexual contact as
13 defined in section 566.010, or a sexual performance and which has as one of its participants or
14 portrays as an observer of such conduct, contact, or performance a minor; or
15 (b) Any visual depiction or artificially generated visual depiction, including any
16 photograph, film, video, picture, or computer or computer-generated image or picture,

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 whether made or produced by electronic, mechanical, or other means, of sexually explicit
18 conduct where:

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

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

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

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

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

45 [8] (8) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate,
46 disseminate, present, exhibit or otherwise provide;

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

53 [9] (10) "Minor", any person less than eighteen years of age;

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

57 [(+) (12) "Obscene", any material or performance if, taken as a whole:
58 (a) Applying contemporary community standards, its predominant appeal is to
59 prurient interest in sex; and

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

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

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

69 [(+) (14) "Performance", any play, motion picture film, videotape, dance or
70 exhibition performed before an audience of one or more;

71 [(+) (15) "Pornographic for minors", any material or performance if the following
72 apply:

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

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

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

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

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

89 [(+) (18) "Regularly", the consistent and repeated doing of the act so described;

90 **[(18)] (19)** "Sadomasochistic abuse", flagellation or torture by or upon a person as an
91 act of sexual stimulation or gratification;

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

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

103 **[(21)] (22)** "Sexually explicit conduct", actual or simulated:

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

106 (b) Bestiality;

107 (c) Masturbation;

108 (d) Sadistic or masochistic abuse; or

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

110 **[(22)] (23)** "Sexually oriented business" includes:

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

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

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

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

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

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

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

134 (b) An adult cabaret;

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

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

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

149 c. In a structure:

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

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

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

158 [(23)] (24) "Sexual performance", any performance, or part thereof, which includes
159 sexual conduct by a child who is less than eighteen years of age;

160 [(24)] (25) "Specified anatomical areas" include:

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

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

165 ~~[25]~~ (26) "Specified sexual activity", includes any of the following:

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

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

169 ~~[26]~~ (27) "Substantial", at least thirty percent of the item or items so modified;

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

573.550. 1. A person commits the offense of providing explicit sexual material to a
2 student if such person is affiliated with a public or private elementary or secondary school in
3 an official capacity and, knowing of its content and character, such person provides, assigns,
4 supplies, distributes, loans, or coerces acceptance of or the approval of the providing of
5 explicit sexual material to a student or possesses with the purpose of providing, assigning,
6 supplying, distributing, loaning, or coercing acceptance of or the approval of the providing of
7 explicit sexual material to a student.

8 2. The offense of providing explicit sexual material to a student is a class A
9 misdemeanor.

10 3. As used in this section, the following terms shall mean:

11 (1) "Explicit sexual material", any pictorial, three-dimensional, or visual depiction **or**
12 **artificially generated visual depiction**, including any photography, film, video, picture, or
13 computer-generated image, showing human masturbation, deviate sexual intercourse as
14 defined in section 566.010, sexual intercourse, direct physical stimulation of genitals,
15 sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals;
16 provided, however, that works of art, when taken as a whole, that have serious artistic
17 significance, or works of anthropological significance, or materials used in science courses,
18 including but not limited to materials used in biology, anatomy, physiology, and sexual
19 education classes shall not be deemed to be within the foregoing definition;

20 (2) "Person affiliated with a public or private elementary or secondary school in an
21 official capacity", an administrator, teacher, librarian, media center personnel, substitute
22 teacher, teacher's assistant, student teacher, law enforcement officer, school board member,
23 school bus driver, guidance counselor, coach, guest lecturer, guest speaker, or other nonschool
24 employee who is invited to present information to students by a teacher, administrator, or

25 other school employee. Such term shall not include a student enrolled in the elementary or
26 secondary school.

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