

# SENATE BILL NO. 1187

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

3802S.01I

KRISTINA MARTIN, Secretary

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Section A. Sections 67.2540, 226.531, and 573.010, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 67.2540, 226.531, and 573.010, to read as follows:

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

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

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

(3) **"Drag performance"**, a performance in which a performer exhibits a gender that is different from the performer's biological sex as assigned at birth using clothing, makeup, or other physical markers and sings, lip

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 **syncs, dances, or otherwise performs before an audience for**  
19 **entertainment;**

20 (4) "Employee", a person who is at least twenty-one  
21 years of age and who performs any service on the premises of  
22 a sexually oriented business on a full-time, part-time, or  
23 contract basis, whether or not the person is denominated an  
24 employee, independent contractor, agent, or otherwise, and  
25 whether or not said person is paid a salary, wage, or other  
26 compensation by the operator of said business. The term  
27 employee does not include a person exclusively on the  
28 premises for repair or maintenance of the premises or  
29 equipment on the premises, or for the delivery of goods to  
30 the premises;

31 [(3)] (5) "Nudity" or a "state of nudity", the showing  
32 of the human male or female genitals, pubic area, vulva,  
33 anus, anal cleft or anal cleavage with less than a fully  
34 opaque covering, the showing of the female breast with less  
35 than a fully opaque covering of any part of the nipple, or  
36 the showing of the covered male genitals in a discernibly  
37 turgid state;

38 [(4)] (6) "Nuisance", any place in or upon which  
39 lewdness, assignation, or prostitution is conducted,  
40 permitted, continued, or exists, or any place, in or upon  
41 which lewd, indecent, lascivious, or obscene films, or films  
42 designed to be projected for exhibition, are photographed,  
43 manufactured, developed, screened, exhibited, or otherwise  
44 prepared or shown, and the personal property and contents  
45 used in conducting and maintaining any such place for any  
46 such purpose. The provisions of this section shall not  
47 affect any newspaper, magazine, or other publication entered  
48 as second class matter by the post office department;

49            [(5)] (7) "Person", an individual, proprietorship,  
50 partnership, corporation, association, or other legal entity;

51            [(6)] (8) "Seminude" or in a "seminude condition", a  
52 state of dress in which opaque clothing fails to cover the  
53 genitals, anus, anal cleft or cleavage, pubic area, vulva,  
54 nipple and areola of the female breast below a horizontal  
55 line across the top of the areola at its highest point.  
56 Seminudity shall include the entire lower portion of the  
57 female breast, but shall not include any portion of the  
58 cleavage of the human female breast exhibited by wearing  
59 apparel provided the areola is not exposed in whole or part;

60            [(7)] (9) "Sexually oriented business", an adult  
61 cabaret or any business which offers its patrons goods of  
62 which a substantial or significant portion are sexually  
63 oriented material **or any nightclub, bar, restaurant, or**  
64 **similar commercial enterprise that provides an audience of**  
65 **two or more individuals a drag performance.** It shall be  
66 presumed that a business that derives thirty percent or less  
67 of its revenue from sexually oriented materials is presumed  
68 not to be a sexually oriented business. No building,  
69 premises, structure, or other facility that contains any  
70 sexually oriented business shall contain any other kind of  
71 sexually oriented business;

72            [(8)] (10) "Sexually oriented materials", any  
73 pictorial or three-dimensional material, or film, motion  
74 picture, DVD, video cassette, or similar photographic  
75 reproduction, that depicts nudity, sexual conduct, sexual  
76 excitement, or sadomasochistic abuse, as defined in section  
77 573.010;

78            [(9)] (11) "Specified criminal activity" includes the  
79 following offenses:

80 (a) Prostitution or promotion of prostitution;  
81 dissemination of obscenity; sale, distribution, or display  
82 of harmful material to a minor; sexual performance by a  
83 child; possession or distribution of child pornography;  
84 public lewdness; indecent exposure; indecency with a child;  
85 engaging in organized criminal activity; sexual assault;  
86 molestation of a child; gambling prohibited under Missouri  
87 law; or distribution of a controlled substance; or any  
88 similar offenses described in this subdivision under the  
89 criminal or penal code of other states or countries;

90 (b) For which:

91 a. Less than two years have elapsed since the date of  
92 conviction or the date of release from confinement imposed  
93 for the conviction, whichever is the later date, if the  
94 conviction is of a misdemeanor offense;

95 b. Less than five years have elapsed since the date of  
96 conviction or the date of release from confinement for the  
97 conviction, whichever is the later date, if the conviction  
98 is of a felony offense; or

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

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

108 **[(10)] (12)** "Specified sexual activities" includes the  
109 following acts:

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

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

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

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

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

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

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

20 (4) **"Seminudity", a state of dress in which opaque**  
21 **clothing fails to cover the genitals, anus, anal cleft or**  
22 **cleavage, pubic area, vulva, nipple and areola of the female**  
23 **breast below a horizontal line across the top of the areola**  
24 **at its highest point. Seminudity shall include the entire**  
25 **lower portion of the female breast, but shall not include**  
26 **any portion of the cleavage of the human female breast**  
27 **exhibited by wearing apparel provided the areola is not**  
28 **exposed in whole or part;**

29            [(3)] (5) "Sexually oriented business", any business  
30 which offers its patrons goods of which a substantial  
31 portion are sexually oriented materials **or any nightclub,**  
32 **bar, restaurant, or similar commercial enterprise that**  
33 **provides an audience of two or more individuals a drag**  
34 **performance.** Any business where more than ten percent of  
35 display space is used for sexually oriented materials shall  
36 be presumed to be a sexually oriented business;

37            [(4)] (6) "Sexually oriented materials", any textual,  
38 pictorial, or three-dimensional material that depicts  
39 nudity, sexual conduct, sexual excitement, or  
40 sadomasochistic abuse in a way which is patently offensive  
41 to the average person applying contemporary adult community  
42 standards with respect to what is suitable for minors.

43            2. No billboard or other exterior advertising sign for  
44 an adult cabaret or sexually oriented business shall be  
45 located within one mile of any state highway except if such  
46 business is located within one mile of a state highway then  
47 the business may display a maximum of two exterior signs on  
48 the premises of the business, consisting of one  
49 identification sign and one sign solely giving notice that  
50 the premises are off limits to minors. The identification  
51 sign shall be no more than forty square feet in size and  
52 shall include no more than the following information: name,  
53 street address, telephone number, and operating hours of the  
54 business.

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

59            4. Any owner of such a business who violates the  
60 provisions of this section shall be guilty of a class C

61 misdemeanor. Each week a violation of this section  
62 continues to exist shall constitute a separate offense.

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

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

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

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

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

16 [(3)] (4) "Child", any person under the age of  
17 fourteen;

18 [(4)] (5) "Child pornography":

19 (a) Any obscene material or performance depicting  
20 sexual conduct, sexual contact as defined in section  
21 566.010, or a sexual performance and which has as one of its  
22 participants or portrays as an observer of such conduct,  
23 contact, or performance a minor; or

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

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

31 b. Such visual depiction is a digital image, computer  
32 image, or computer-generated image that is, or is  
33 indistinguishable from, that of a minor engaging in sexually  
34 explicit conduct, in that the depiction is such that an  
35 ordinary person viewing the depiction would conclude that  
36 the depiction is of an actual minor engaged in sexually  
37 explicit conduct; or

38 c. Such visual depiction has been created, adapted, or  
39 modified to show that an identifiable minor is engaging in  
40 sexually explicit conduct. "Identifiable minor" means a  
41 person who was a minor at the time the visual depiction was  
42 created, adapted, or modified; or whose image as a minor was  
43 used in creating, adapting, or modifying the visual  
44 depiction; and who is recognizable as an actual person by  
45 the person's face, likeness, or other distinguishing  
46 characteristic, such as a unique birthmark or other  
47 recognizable feature. The term identifiable minor shall not  
48 be construed to require proof of the actual identity of the  
49 identifiable minor;

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

56 [(5)] (7) "Employ", "employee", or "employment", any  
57 person who performs any service on the premises of a  
58 sexually oriented business, on a full-time, part-time, or  
59 contract basis, whether or not the person is denominated an  
60 employee, independent contractor, agent, or otherwise.  
61 Employee does not include a person exclusively on the  
62 premises for repair or maintenance of the premises or for  
63 the delivery of goods to the premises;

64 [(6)] (8) "Explicit sexual material", any pictorial or  
65 three-dimensional material depicting human masturbation,  
66 deviate sexual intercourse, sexual intercourse, direct  
67 physical stimulation or unclothed genitals, sadomasochistic  
68 abuse, or emphasizing the depiction of postpubertal human  
69 genitals; provided, however, that works of art or of  
70 anthropological significance shall not be deemed to be  
71 within the foregoing definition;

72 [(7)] (9) "Furnish", to issue, sell, give, provide,  
73 lend, mail, deliver, transfer, circulate, disseminate,  
74 present, exhibit or otherwise provide;

75 [(8)] (10) "Material", anything printed or written, or  
76 any picture, drawing, photograph, motion picture film,  
77 videotape or videotape production, or pictorial  
78 representation, or any recording or transcription, or any  
79 mechanical, chemical, or electrical reproduction, or stored  
80 computer data, or anything which is or may be used as a  
81 means of communication. Material includes undeveloped  
82 photographs, molds, printing plates, stored computer data  
83 and other latent representational objects;

84 [(9)] (11) "Minor", any person less than eighteen  
85 years of age;

86 [(10)] (12) "Nudity" or "state of nudity", the showing  
87 of the human genitals, pubic area, vulva, anus, anal cleft,

88 or the female breast with less than a fully opaque covering  
89 of any part of the nipple or areola;

90 [(11)] (13) "Obscene", any material or performance if,  
91 taken as a whole:

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

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

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

99 [(12)] (14) "Operator", any person on the premises of  
100 a sexually oriented business who causes the business to  
101 function, puts or keeps the business in operation, or is  
102 authorized to manage the business or exercise overall  
103 operational control of the business premises. A person may  
104 be found to be operating or causing to be operated a  
105 sexually oriented business whether or not such person is an  
106 owner, part owner, or licensee of the business;

107 [(13)] (15) "Performance", any play, motion picture  
108 film, videotape, dance or exhibition performed before an  
109 audience of one or more;

110 [(14)] (16) "Pornographic for minors", any material or  
111 performance if the following apply:

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

116 (b) The material or performance depicts or describes  
117 nudity, sexual conduct, the condition of human genitals when  
118 in a state of sexual stimulation or arousal, or  
119 sadomasochistic abuse in a way which is patently offensive

120 to the average person applying contemporary adult community  
121 standards with respect to what is suitable for minors; and

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

125 [(15)] (17) "Premises", the real property upon which a  
126 sexually oriented business is located, and all appurtenances  
127 thereto and buildings thereon, including but not limited to  
128 the sexually oriented business, the grounds, private  
129 walkways, and parking lots or parking garages or both;

130 [(16)] (18) "Promote", to manufacture, issue, sell,  
131 provide, mail, deliver, transfer, transmute, publish,  
132 distribute, circulate, disseminate, present, exhibit, or  
133 advertise, or to offer or agree to do the same, by any means  
134 including a computer;

135 [(17)] (19) "Regularly", the consistent and repeated  
136 doing of the act so described;

137 [(18)] (20) "Sodomasochistic abuse", flagellation or  
138 torture by or upon a person as an act of sexual stimulation  
139 or gratification;

140 [(19)] (21) "Semi-nude" or "state of semi-nudity", the  
141 showing of the female breast below a horizontal line across  
142 the top of the areola and extending across the width of the  
143 breast at such point, or the showing of the male or female  
144 buttocks. Such definition includes the lower portion of the  
145 human female breast, but shall not include any portion of  
146 the cleavage of the female breasts exhibited by a bikini,  
147 dress, blouse, shirt, leotard, or similar wearing apparel  
148 provided the areola is not exposed in whole or in part;

149 [(20)] (22) "Sexual conduct", actual or simulated,  
150 normal or perverted acts of human masturbation; deviate  
151 sexual intercourse; sexual intercourse; or physical contact

152 with a person's clothed or unclothed genitals, pubic area,  
153 buttocks, or the breast of a female in an act of apparent  
154 sexual stimulation or gratification or any sadomasochistic  
155 abuse or acts including animals or any latent objects in an  
156 act of apparent sexual stimulation or gratification;

157 **[(21)] (23)** "Sexually explicit conduct", actual or  
158 simulated:

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

162 (b) Bestiality;

163 (c) Masturbation;

164 (d) Sadistic or masochistic abuse; or

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

167 **[(22)] (24)** "Sexually oriented business" includes:

168 (a) An adult bookstore or adult video store. "Adult  
169 bookstore" or "adult video store" means a commercial  
170 establishment which, as one of its principal business  
171 activities, offers for sale or rental for any form of  
172 consideration any one or more of the following: books,  
173 magazines, periodicals, or other printed matter, or  
174 photographs, films, motion pictures, video cassettes,  
175 compact discs, digital video discs, slides, or other visual  
176 representations which are characterized by their emphasis  
177 upon the display of specified sexual activities or specified  
178 anatomical areas. A principal business activity exists  
179 where the commercial establishment:

180 a. Has a substantial portion of its displayed  
181 merchandise which consists of such items; or

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

184           c. Has a substantial portion of the retail value of  
185 its displayed merchandise which consists of such items; or  
186           d. Derives a substantial portion of its revenues from  
187 the sale or rental, for any form of consideration, of such  
188 items; or  
189           e. Maintains a substantial section of its interior  
190 business space for the sale or rental of such items; or  
191           f. Maintains an adult arcade. "Adult arcade" means  
192 any place to which the public is permitted or invited  
193 wherein coin-operated or slug-operated or electronically,  
194 electrically, or mechanically controlled still or motion  
195 picture machines, projectors, or other image-producing  
196 devices are regularly maintained to show images to five or  
197 fewer persons per machine at any one time, and where the  
198 images so displayed are characterized by their emphasis upon  
199 matter exhibiting specified sexual activities or specified  
200 anatomical areas;  
201           (b) An adult cabaret;  
202           (c) An adult motion picture theater. "Adult motion  
203 picture theater" means a commercial establishment where  
204 films, motion pictures, video cassettes, slides, or similar  
205 photographic reproductions, which are characterized by their  
206 emphasis upon the display of specified sexual activities or  
207 specified anatomical areas are regularly shown to more than  
208 five persons for any form of consideration;  
209           (d) A semi-nude model studio. "Semi-nude model  
210 studio" means a place where persons regularly appear in a  
211 state of semi-nudity for money or any form of consideration  
212 in order to be observed, sketched, drawn, painted,  
213 sculptured, photographed, or similarly depicted by other  
214 persons. Such definition shall not apply to any place where

215 persons appearing in a state of semi-nudity do so in a  
216 modeling class operated:

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

219 b. By a private college or university which maintains  
220 and operates educational programs in which credits are  
221 transferable to a college, junior college, or university  
222 supported entirely or partly by taxation; or

223 c. In a structure:

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

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

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

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

239 [(23)] (25) "Sexual performance", any performance, or  
240 part thereof, which includes sexual conduct by a child who  
241 is less than eighteen years of age;

242 [(24)] (26) "Specified anatomical areas" include:

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

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

248 [(25)] (27) "Specified sexual activity", includes any  
249 of the following:

250 (a) Intercourse, oral copulation, masturbation, or  
251 sodomy; or

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

255 [(26)] (28) "Substantial", at least thirty percent of  
256 the item or items so modified;

257 [(27)] (29) "Visual depiction", includes undeveloped  
258 film and videotape, and data stored on computer disk or by  
259 electronic means which is capable of conversion into a  
260 visual image.

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