

SENATE BILL NO. 949

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

3295S.01I

KRISTINA MARTIN, Secretary

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.

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Section A. Section 573.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 573.010 and 573.520, to read as follows: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

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

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

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

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

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

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

49 [(5)] (6) "Employ", "employee", or "employment", any
50 person who performs any service on the premises of a
51 sexually oriented business, on a full-time, part-time, or
52 contract basis, whether or not the person is denominated an
53 employee, independent contractor, agent, or otherwise.
54 Employee does not include a person exclusively on the
55 premises for repair or maintenance of the premises or for
56 the delivery of goods to the premises;

57 [(6)] (7) "Explicit sexual material", any pictorial or
58 three-dimensional material depicting human masturbation,
59 deviate sexual intercourse, sexual intercourse, direct
60 physical stimulation or unclothed genitals, sadomasochistic
61 abuse, or emphasizing the depiction of postpubertal human
62 genitals; provided, however, that works of art or of
63 anthropological significance shall not be deemed to be
64 within the foregoing definition;

65 [(7)] (8) "Furnish", to issue, sell, give, provide,
66 lend, mail, deliver, transfer, circulate, disseminate,
67 present, exhibit or otherwise provide;

68 [(8)] (9) "Material", anything printed or written, or
69 any picture, drawing, photograph, motion picture film,
70 videotape or videotape production, or pictorial
71 representation, or any recording or transcription, or any
72 mechanical, chemical, or electrical reproduction, or stored
73 computer data, or anything which is or may be used as a
74 means of communication. Material includes undeveloped
75 photographs, molds, printing plates, stored computer data
76 and other latent representational objects;

77 [(9)] (10) "Minor", any person less than eighteen
78 years of age;

79 [(10)] (11) "Nudity" or "state of nudity", the showing
80 of the human genitals, pubic area, vulva, anus, anal cleft,

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

83 [(11)] (12) "Obscene", any material or performance if,
84 taken as a whole:

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

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

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

92 [(12)] (13) "Operator", any person on the premises of
93 a sexually oriented business who causes the business to
94 function, puts or keeps the business in operation, or is
95 authorized to manage the business or exercise overall
96 operational control of the business premises. A person may
97 be found to be operating or causing to be operated a
98 sexually oriented business whether or not such person is an
99 owner, part owner, or licensee of the business;

100 [(13)] (14) "Performance", any play, motion picture
101 film, videotape, dance or exhibition performed before an
102 audience of one or more;

103 [(14)] (15) "Pornographic for minors", any material or
104 performance if the following apply:

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

109 (b) The material or performance depicts or describes
110 nudity, sexual conduct, the condition of human genitals when
111 in a state of sexual stimulation or arousal, or
112 sadomasochistic abuse in a way which is patently offensive

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

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

118 [(15)] (16) "Premises", the real property upon which a
119 sexually oriented business is located, and all appurtenances
120 thereto and buildings thereon, including but not limited to
121 the sexually oriented business, the grounds, private
122 walkways, and parking lots or parking garages or both;

123 [(16)] (17) "Promote", to manufacture, issue, sell,
124 provide, mail, deliver, transfer, transmute, publish,
125 distribute, circulate, disseminate, present, exhibit, or
126 advertise, or to offer or agree to do the same, by any means
127 including a computer;

128 [(17)] (18) "Regularly", the consistent and repeated
129 doing of the act so described;

130 [(18)] (19) "Sodomasochistic abuse", flagellation or
131 torture by or upon a person as an act of sexual stimulation
132 or gratification;

133 [(19)] (20) "Semi-nude" or "state of semi-nudity", the
134 showing of the female breast below a horizontal line across
135 the top of the areola and extending across the width of the
136 breast at such point, or the showing of the male or female
137 buttocks. Such definition includes the lower portion of the
138 human female breast, but shall not include any portion of
139 the cleavage of the female breasts exhibited by a bikini,
140 dress, blouse, shirt, leotard, or similar wearing apparel
141 provided the areola is not exposed in whole or in part;

142 [(20)] (21) "Sexual conduct", actual or simulated,
143 normal or perverted acts of human masturbation; deviate
144 sexual intercourse; sexual intercourse; or physical contact

145 with a person's clothed or unclothed genitals, pubic area,
146 buttocks, or the breast of a female in an act of apparent
147 sexual stimulation or gratification or any sadomasochistic
148 abuse or acts including animals or any latent objects in an
149 act of apparent sexual stimulation or gratification;

150 [(21)] (22) "Sexually explicit conduct", actual or
151 simulated:

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

155 (b) Bestiality;

156 (c) Masturbation;

157 (d) Sadistic or masochistic abuse; or

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

160 [(22)] (23) "Sexually oriented business" includes:

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

173 a. Has a substantial portion of its displayed
174 merchandise which consists of such items; or

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

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

208 persons appearing in a state of semi-nudity do so in a
209 modeling class operated:

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

212 b. By a private college or university which maintains
213 and operates educational programs in which credits are
214 transferable to a college, junior college, or university
215 supported entirely or partly by taxation; or

216 c. In a structure:

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

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

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

229 [(23)] (24) "Sexual performance", any performance, or
230 part thereof, which includes sexual conduct by a child who
231 is less than eighteen years of age;

232 [(24)] (25) "Specified anatomical areas" include:

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

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

238 [(25)] (26) "Specified sexual activity", includes any
239 of the following:

240 (a) Intercourse, oral copulation, masturbation, or
241 sodomy; or

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

245 [(26)] (27) "Substantial", at least thirty percent of
246 the item or items so modified;

247 [(27)] (28) "Visual depiction", includes undeveloped
248 film and videotape, and data stored on computer disk or by
249 electronic means which is capable of conversion into a
250 visual image.

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

3 (1) On public property; or

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

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

9 3. The provisions of this section shall:

10 (1) Preempt an ordinance or a regulation, restriction,
11 or license that was lawfully adopted or issued by a
12 political subdivision prior to August 28, 2024, if such
13 ordinance, regulation, restriction, or license conflicts
14 with this section; and

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

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