

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2047
93RD GENERAL ASSEMBLY

Reported from the Committee on Local Government April 19, 2006 with recommendation that House Committee Substitute for House Bill No. 2047 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

5611L.04C

AN ACT

To repeal sections 67.2540, 67.2546, and 67.2552, RSMo, and to enact in lieu thereof six 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Section A. Sections 67.2540, 67.2546, and 67.2552, RSMo, are repealed and six new
2 sections enacted in lieu thereof, to be known as sections 67.2540, 67.2546, 67.2548, 67.2552,
3 67.2554, and 67.2556, 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, RSMo, or seminudity
4 in the performance of their duties;
- 5 (2) "Employee", a person who is at least [twenty-one] **eighteen** years of age and who
6 performs any service on the premises of a sexually oriented business on a full-time, part-time,
7 or contract basis, whether or not the person is denominated an employee, independent contractor,
8 agent, or otherwise, and whether or not said person is paid a salary, wage, or other compensation
9 by the operator of said business. The term employee does not include a person exclusively on
10 the premises for repair or maintenance of the premises or equipment on the premises, or for the
11 delivery of goods to the premises;
- 12 (3) "Nudity" or a "state of nudity", the showing of the human male or female genitals,
13 pubic area, vulva, **or** anus[, anal cleft or anal cleavage] with less than a fully opaque covering,

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.

14 the showing of the [female breast] **areola** with less than a fully opaque covering of any part of
15 the nipple, or the showing of the covered male genitals in a discernibly turgid state;

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

23 (5) "Person", an individual, proprietorship, partnership, corporation, association, or other
24 legal entity;

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

31 (7) "Sexually oriented business", an adult cabaret or any business which [offers its
32 patrons goods of which a substantial or significant portion are sexually oriented material. It shall
33 be presumed that a business that derives thirty percent or less of its revenue from sexually
34 oriented materials is presumed not to be a sexually oriented business. No building, premises,
35 structure, or other facility that contains any sexually oriented business shall contain any other
36 kind of sexually oriented business] **generates ten percent or more of its revenue from the sale
37 of sexually oriented materials;**

38 (8) "Sexually oriented materials", any pictorial or three- dimensional material, or film,
39 motion picture, DVD, video cassette, or similar photographic reproduction, that depicts nudity,
40 sexual conduct, sexual excitement, or sadomasochistic abuse, as defined in section 573.010,
41 RSMo;

42 (9) "Specified criminal activity" includes the following offenses:

43 (a) Prostitution or promotion of prostitution; dissemination of obscenity; sale,
44 distribution, or display of harmful material to a minor; sexual performance by a child; possession
45 or distribution of child pornography; public lewdness; indecent exposure; indecency with a child;
46 engaging in organized criminal activity; sexual assault; molestation of a child; gambling
47 prohibited under Missouri law; or distribution of a controlled substance; or any similar offenses
48 described in this subdivision under the criminal or penal code of other states [or countries];

49 (b) For which:

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

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

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

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

62 (10) "Specified sexual activities" includes the following acts:

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

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

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

69 67.2546. 1. **Any county, city, town, or village may provide by ordinance that a**
2 **person who operates or causes to be operated a sexually oriented business shall be prohibited**
3 **from exhibiting in a viewing room on the premises a film, video cassette, DVD, or other video**
4 **reproduction that depicts specified sexual activities unless the viewing room is visible from a**
5 **continuous main aisle in the sexually oriented business and such viewing room is not obscured**
6 **by any curtain, door, wall, or other enclosure. No viewing room shall be occupied by more than**
7 **one individual at a time and there shall be no aperture between viewing rooms which is designed**
8 **or constructed to facilitate sexual activity between persons in different rooms.**

9 2. If a sexually oriented business allows specified criminal activity or specified sexual
10 activity on its premises or otherwise fails to comply with the provisions of subsection 1 of this
11 section, it shall be considered a nuisance as defined by section 67.2540, and shall be closed
12 pursuant to section 567.080, RSMo.

13 3. A person violating the provisions of subsection 1 of this section is guilty of a class A
14 misdemeanor.

15 **67.2548. A sexually oriented business shall not employ any person less than**
2 **eighteen years of age. Any person who employs a person less than eighteen years of age is**
3 **guilty of a class A misdemeanor.**

67.2552. 1. **Any county, city, town, or village may provide by ordinance that** it shall be a class A misdemeanor for a person, in a sexually oriented business, to knowingly and intentionally appear in a state of nudity or depict, simulate, or perform specified sexual activities.

2. **Any county, city, town, or village may provide by ordinance that** it shall be a class A misdemeanor for a person to appear knowingly or intentionally in a sexually oriented business in a seminude condition unless the person is an employee who, while seminude, shall be at least ten feet from any patron or customer and on a stage at least two feet from the floor and behind a railing no less than twenty-four inches in height.

3. **Any county, city, town, or village may provide by ordinance that** it shall be a class A misdemeanor for an employee, while seminude, to touch a customer or the clothing of a customer.

4. **Any county, city, town, or village may provide by ordinance that** it shall be a class A misdemeanor if a person knowingly allows on the premises of a sexually oriented business a person under the age of [twenty-one] **eighteen** years, except for a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

5. The provisions of sections 67.2540 to [67.2552] **67.2556** are designed to protect the following public policy interest of this state, including but not limited to: to mitigate the adverse secondary effects of sexually oriented businesses, to limit harm to minors, and to reduce prostitution, crime, juvenile delinquency, deterioration in property values and lethargy in neighborhood improvement efforts.

67.2554. 1. Any county, city, town, or village may create an ordinance requiring sexually oriented businesses to be licensed and may collect a nonrefundable deposit fee to be paid prior to the processing of the licensing application. The application for such a license shall require the applicant to provide the following information:

- (1) **The applicant's name;**
- (2) **The applicant's age, date of birth, and place of birth;**
- (3) **The address and telephone number of the applicant's present residence;**
- (4) **The address and telephone number of the applicant's present business;**
- (5) **The number on the applicant's driver's license or other state-issued identification card;**
- (6) **The date on which the applicant's driver's license or other state-issued identification card was issued;**
- (7) **The state that issued the applicant's driver's license or other state-issued identification card;**
- (8) **Written proof that the individual is at least eighteen years of age.**

16 **2. A license shall not be issued to any person who has been found guilty of or pled**
17 **guilty to a felony or misdemeanor relating to sexual offenses under chapter 566, RSMo, or**
18 **obscenity offenses under chapter 573, RSMo, in the past ten years.**

67.2556. For the purpose of promoting health, safety, morals or the general welfare
2 **of the community, the legislative body of all counties, cities, towns, and villages is hereby**
3 **empowered to regulate and restrict the location of sexually oriented businesses in**
4 **accordance with the general zoning powers granted to cities, towns, and villages under**
5 **section 89.020, RSMo, counties with a charter form of government under section 64.090,**
6 **RSMo, counties of the first classification under section 64.255, RSMo, counties of the**
7 **second and third classification under section 64.620, RSMo, and all counties except those**
8 **with a charter form of government under section 64.850, RSMo.**

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