

HOUSE BILL No. 2107

By Committee on Federal and State Affairs

1-26

1 AN ACT establishing the community defense act; amending K.S.A. 2010
2 Supp. 22-3901 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. The provisions of sections 1 through 11, and
6 amendments thereto, shall be known and may be cited as the community
7 defense act.

8 New Sec. 2. (a) The purpose of the community defense act is to
9 regulate sexually oriented businesses in order to promote the health, safety
10 and general welfare of the citizens of Kansas, and to establish reasonable
11 and uniform regulations to prevent the deleterious secondary effects of
12 sexually oriented businesses within the state. The provisions of this act
13 have neither the purpose nor effect of imposing a limitation or restriction
14 on the content or reasonable access to any communicative materials,
15 including sexually oriented materials. Similarly, it is neither the intent nor
16 effect of this act to restrict or deny access by adults to sexually oriented
17 materials protected by the first amendment, or to deny access by the
18 distributors and exhibitors of sexually oriented entertainment to their
19 intended market. Neither is it the intent nor effect of this act to condone or
20 legitimize the distribution of obscene material.

21 (b) The legislature finds:

22 (1) Sexually oriented businesses, as a category of commercial
23 enterprises, are associated with a wide variety of adverse secondary
24 effects, including, but not limited to, personal property crimes,
25 prostitution, potential spread of disease, lewdness, public indecency,
26 obscenity, illicit drug use and drug trafficking, negative impacts on
27 surrounding properties, urban blight, litter, and sexual assault and
28 exploitation.

29 (2) Sexually oriented businesses should be separated from sensitive
30 land uses to minimize the impact of their secondary effects upon such
31 uses, and should be separated from other sexually oriented businesses, to
32 minimize the secondary effects associated with such uses and to prevent an
33 unnecessary concentration of sexually oriented businesses in one area.

34 (3) Each of the foregoing negative secondary effects constitutes a

1 harm which the state has substantial interest in preventing or abating. Such
2 substantial government interest is preventing secondary effects, which is
3 the state's rationale for this act, and exists independent of any comparative
4 analysis between sexually oriented and nonsexually oriented businesses.
5 Additionally, the state's interest in regulating sexually oriented businesses
6 extends to preventing future secondary effects of current or future sexually
7 oriented businesses that may locate in the state.

8 New Sec. 3. As used in sections 1 through 11, and amendments
9 thereto, the following words and phrases shall have the following
10 meanings unless a different meaning clearly appears from the context:

11 (a) "Adult arcade" means any place to which the public is permitted
12 or invited, wherein coin-operated or slug-operated or electronically,
13 electrically or mechanically controlled still or motion picture machines,
14 projectors or other image-producing devices are regularly maintained to
15 show images to five or fewer persons per machine at any one time, and
16 where the images so displayed are characterized by their emphasis upon
17 matter exhibiting specified sexual activities or specified anatomical areas.

18 (b) "Adult bookstore or adult video store" means a commercial
19 establishment which, as one of its principal business activities, offers for
20 sale or rental for any form of consideration any one or more of the
21 following items: Books, magazines, periodicals or other printed matter, or
22 photographs, films, motion pictures, video cassettes, compact discs, digital
23 video discs, slides or other visual representations which are characterized
24 by their emphasis upon the display of specified sexual activities or
25 specified anatomical areas. For purposes of this subsection, a principal
26 business activity exists where the commercial establishment:

27 (1) Has a substantial portion of its displayed merchandise which
28 consists of such items;

29 (2) has a substantial portion of the wholesale value of its displayed
30 merchandise which consists of such items;

31 (3) has a substantial portion of the retail value of its displayed
32 merchandise which consists of such items;

33 (4) derives a substantial portion of its revenues from the sale or
34 rental, for any form of consideration, of such items;

35 (5) maintains a substantial section of its interior business space for
36 the sale or rental of such items; or

37 (6) maintains an adult arcade.

38 (c) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle
39 club or other commercial establishment, regardless of whether alcoholic
40 beverages are served, which regularly features persons who appear semi-
41 nude.

42 (d) "Adult motion picture theater" means a commercial establishment
43 where films, motion pictures, video cassettes, slides or similar

1 photographic reproductions, which are characterized by their emphasis
2 upon the display of specified sexual activities or specified anatomical
3 areas, are regularly shown to more than five persons for any form of
4 consideration.

5 (e) "Characterized by" means describing the essential character or
6 dominant theme of an item.

7 (f) "Employ, employee and employment" means any person who
8 performs any service on the premises of a sexually oriented business, on a
9 full-time, part-time or contract basis, whether or not the person is
10 denominated an employee, independent contractor, agent or otherwise.
11 "Employee" does not mean a person exclusively on the premises for repair
12 or maintenance of the premises or for the delivery of goods to the
13 premises.

14 (g) "Establish or establishment" means and includes any of the
15 following:

16 (1) The opening or commencement of any sexually oriented business
17 as a new business;

18 (2) the conversion of an existing business, whether or not a sexually
19 oriented business, to any sexually oriented business; or

20 (3) the addition of any sexually oriented business to any other
21 existing sexually oriented business.

22 (h) "Influential interest" means any of the following:

23 (1) The actual power to operate the sexually oriented business or
24 control the operation, management or policies of the sexually oriented
25 business or legal entity which operates the sexually oriented business;

26 (2) ownership of a financial interest of 30% or more of a business or
27 of any class of voting securities of a business; or

28 (3) holding an office, including, but not limited to, the office of
29 president, vice president, secretary, treasurer, managing member or
30 managing director in a legal entity which operates the sexually oriented
31 business.

32 (i) "Nudity or a state of nudity" means the showing of the human
33 male or female genitals, pubic area, vulva, anus, anal cleft or cleavage
34 with less than a fully opaque covering, or the showing of the female breast
35 with less than a fully opaque covering of any part of the nipple and areola.

36 (j) "Operator" means any person on the premises of a sexually
37 oriented business who causes the business to function or who puts or keeps
38 in operation the business or who is authorized to manage the business or
39 exercise overall operational control of the business premises. A person
40 may be found to be operating or causing to be operated a sexually oriented
41 business whether or not that person is an owner, part owner or licensee of
42 the business.

43 (k) "Premises" means the real property upon which the sexually

1 oriented business is located, and all appurtenances thereto and buildings
2 thereon, including, but not limited to, the sexually oriented business, the
3 grounds, private walkways, parking lots and parking garages adjacent
4 thereto, under the ownership, control or supervision of the licensee, as
5 described in the application for a sexually oriented business license.

6 (l) "Regularly" means and refers to the consistent and repeated doing
7 of the act so described.

8 (m) "Semi-nude or state of semi-nudity" means the showing of the
9 female breast below a horizontal line across the top of the areola and
10 extending across the width of the breast at that point or the showing of the
11 male or female buttocks. This definition shall include the lower portion of
12 the human female breast, but shall not include any portion of the cleavage
13 of the human female breasts exhibited by a bikini, dress, blouse, shirt,
14 leotard or similar wearing apparel provided the areola is not exposed in
15 whole or in part.

16 (n) "Semi-nude model studio" means a place where persons regularly
17 appear in a state of semi-nudity for money or any form of consideration in
18 order to be observed, sketched, drawn, painted, sculptured, photographed
19 or similarly depicted by other persons. "Semi-nude model studio" does not
20 mean any place where persons appearing in a state of semi-nudity did so in
21 a modeling class operated:

22 (1) By a postsecondary educational institution, as defined in K.S.A.
23 74-3201b, and amendments thereto, supported entirely or partly by state
24 moneys;

25 (2) by a private postsecondary educational institution, as defined in
26 K.S.A. 2010 Supp. 74-32,163, and amendments thereto, supported entirely
27 or partly by state moneys; or

28 (3) in a structure which has no sign visible from the exterior of the
29 structure and no other advertising that indicates a semi-nude person is
30 available for viewing, and where, in order to participate in a class, a
31 student must enroll at least three days in advance of the class.

32 (o) "Sexual device" means any three dimensional object designed and
33 marketed for stimulation of the male or female human genitals, anus,
34 female breast or for sadomasochistic use or abuse of oneself or others and
35 shall include devices such as dildos, vibrators, penis pumps and physical
36 representations of the human genital organs. Nothing in this definition
37 shall be construed to include devices primarily intended for protection
38 against sexually transmitted diseases or for preventing pregnancy.

39 (p) "Sexual device shop" means a commercial establishment that
40 regularly features sexual devices. Nothing in this definition shall be
41 construed to include any pharmacy, drug store, medical clinic or any
42 establishment primarily dedicated to providing medical or healthcare
43 products or services, nor shall this definition be construed to include

1 commercial establishments which do not restrict access to their premises
2 by reason of age.

3 (q) "Sexual encounter center" means a business or commercial
4 enterprise that, as one of its principal business purposes, purports to offer
5 for any form of consideration, physical contact in the form of wrestling or
6 tumbling between persons of the opposite sex when one or more of the
7 persons is semi-nude.

8 (r) "Sexually oriented business" means an adult arcade, an adult
9 bookstore or adult video store, an adult cabaret, an adult motion picture
10 theater, a semi-nude model studio, a sexual device shop or a sexual
11 encounter center.

12 (s) "Specified anatomical areas" means and includes:

13 (1) Less than completely and opaquely covered: Human genitals;
14 pubic region; buttock; and female breast below a point immediately above
15 the top of the areola; and

16 (2) human male genitals in a discernibly turgid state, even if
17 completely and opaquely covered.

18 (t) "Specified criminal activity" means any of the following specified
19 offenses, by a person who, within the preceding eight years, has been
20 convicted of, or released from confinement for:

21 **[(1) Any offense set forth in K.S.A. 21-3502, 21-3503, 21-3504, 21-
22 3505, 21-3506, 21-3507, 21-3508, 21-3510, 21-3511, 21-3512, 21-3513,
23 21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3522 or 21-3523, prior
24 to their repeal;]**

25 **[(2)]** any offense set forth in sections 67, 68, 69, 70, 71, 72, 73,
26 74, 75, 76, 77, 229, 230 and 231 of chapter 136 of the 2010 session laws of
27 Kansas, and amendments thereto;

28 **[(3) any offense set forth in K.S.A. 21-4301, 21-4301a, 21-4301b or
29 21-4031c, prior to their repeal;]**

30 **[(4)]** any offense set forth in section 212 or 213 of chapter 136 of
31 the 2010 session laws of Kansas, and amendments thereto;

32 **[(5)]** any offense set forth in K.S.A. 2010 Supp 21-36a01 through
33 21-36a17, and amendments thereto;

34 **[(6)]** any offense set forth in K.S.A. 79-3228, and amendments
35 thereto, or any other provision of law which prescribes criminal conduct
36 with regard to the Kansas income tax act;

37 **[(7)]** any attempt, solicitation or conspiracy to commit an offense
38 in paragraphs (1) through (4); or

39 **[(8)]** any offense under the laws of another jurisdiction which is
40 substantially the same as an offense in paragraphs (1) through (5).

41 (u) "Specified sexual activity" means any of the following:

42 (1) Intercourse, oral copulation, masturbation or sodomy; or

43 (2) excretory functions as a part of or in connection with any of the

1 activities described in paragraph (1).

2 (v) "Substantial" means at least 30% of the items so modified.

3 (w) "Viewing room" means the room, booth or area where a patron of
4 a sexually oriented business would ordinarily be positioned while
5 watching a film, video cassette, digital video disc or other video
6 reproduction.

7 New Sec. 4. (a) No person shall establish a sexually oriented business
8 within 1,000 feet of any preexisting accredited public or private
9 elementary or secondary school, house of worship, state-licensed day care
10 facility, public library, public park, residence or other sexually oriented
11 business. ~~This subsection shall not apply to any sexually oriented business~~
12 ~~lawfully established prior to the effective date of this act.~~ For purposes of
13 this subsection, measurements shall be made in a straight line, without
14 regard to intervening structures or objects, from the closest ~~portion~~
15 **property line** of the parcel containing the sexually oriented business to the
16 closest ~~portion~~ **property line** of the parcel containing the preexisting
17 elementary or secondary school, house of worship, state-licensed day care
18 facility, public library, public park, residence or other sexually oriented
19 business. This subsection shall not apply to any sexually oriented business
20 lawfully established prior to the effective date of this act.

21 (b) No person shall establish a sexually oriented business if a person
22 with an influential interest in the sexually oriented business has been
23 convicted of a specified criminal activity.

24 New Sec. 5. (a) No person shall knowingly or intentionally, in a
25 sexually oriented business, appear in a state of nudity.

26 (b) No employee shall knowingly or intentionally, in a sexually
27 oriented business, appear in a semi-nude condition unless the employee,
28 while semi-nude, shall be and remain on a fixed stage at least six feet from
29 all patrons and at least 18 inches from the floor in a room of at least 600
30 square feet.

31 (c) No employee shall knowingly or intentionally, in a sexually
32 oriented business, while semi-nude, touch a patron or the clothing of a
33 patron.

34 New Sec. 6. (a) A sexually oriented business which exhibits on the
35 premises, through any mechanical or electronic image-producing device, a
36 film, video cassette, digital video disc or other video reproduction
37 characterized by an emphasis on the display of specified sexual activities
38 or specified anatomical areas shall comply with the following
39 requirements:

40 (1) The interior of the premises shall be configured in such a manner
41 that there is an unobstructed view from an operator's station of every area
42 of the premises, including the interior of each viewing room, but excluding
43 restrooms;

1 (2) an operator's station shall not exceed 32 square feet of floor area;
2 and

3 (3) if the premises has two or more operator's stations designated,
4 then the interior of the premises shall be configured in such a manner that
5 there is an unobstructed view of each area of the premises to which any
6 patron is permitted access for any purpose from at least one of the
7 operator's stations. The view required by this subsection must be by direct
8 line of sight from the operator's station.

9 (b) It shall be the duty of the operator to ensure that at least one
10 employee is on duty and situated in an operator's station at all times that
11 any patron is on the portion of the premises monitored by that operator
12 station. It shall be the duty of the operator, and it shall also be the duty of
13 any employees present on the premises, to ensure that the view area
14 specified in subsection (a) remains unobstructed by any doors, curtains,
15 walls, merchandise, display racks or other materials or enclosures at all
16 times that any patron is present on the premises.

17 New Sec. 7. Sexually oriented businesses that do not have stages or
18 interior configurations which meet at least the minimum requirements of
19 sections 5 and 6, and amendments thereto, shall be given 180 days from
20 the effective date of this act to comply with the stage and building
21 requirements of sections 5 and 6, and amendments thereto. During such
22 time period any employee who appears within view of any patron in a
23 semi-nude condition shall remain, while semi-nude, at least six feet from
24 all patrons.

25 New Sec. 8. (a) No operator shall allow or permit a sexually oriented
26 business to be or remain open between the hours of 12:00 midnight and
27 6:00 a.m. on any day.

28 (b) No person shall knowingly allow a person under the age of 18
29 years on the premises of a sexually oriented business.

30 ~~(c) No person shall knowingly or intentionally sell, use or consume~~
31 ~~alcoholic or cereal malt beverages on the premises of a sexually oriented~~
32 ~~business.~~

33 New Sec. 9. For the purposes of sections 1 through 11, and
34 amendments thereto, it shall be a defense to liability for an officer,
35 director, general partner or a person who managed, supervised or
36 controlled the operation of the sexually oriented business: (a) That the act
37 which forms the basis for the violation was committed by an employee and
38 that such officer, director, general partner or a person who managed,
39 supervised or controlled the operation of the sexually oriented business did
40 not knowingly or recklessly allow such act by the employee; or (b) to
41 whom liability is imputed was powerless to prevent the act of an employee
42 which act forms the basis for the violation.

43 New Sec. 10. Any person violating or refusing to comply with any of

1 the provisions of sections 1 through 11, and amendments thereto, shall be
2 guilty of a class C misdemeanor. Each day that a violation is permitted to
3 exist or occur, and each separate occurrence, shall constitute a separate
4 offense.

5 New Sec. 11. If any provision of sections 1 through 11, and
6 amendments thereto, or the application thereof to any persons or
7 circumstances is held to be invalid, such invalidity shall not affect other
8 provisions or application of sections 1 through 11, and amendments
9 thereto, and to this end the provisions of sections 1 through 11, and
10 amendments thereto, are declared to be severable.

11 New Sec. 12. Nothing in this act shall prevent any city or county
12 from enacting or enforcing any local ordinance or resolution concerning
13 the regulation of sexually oriented businesses or similar adult oriented
14 businesses which is ~~stricter than but not inconsistent~~ **not in conflict** with
15 the act.

16 Sec. 13. K.S.A. 2010 Supp. 22-3901 is hereby amended to read as
17 follows: 22-3901. The following unlawful activities and the use of real or
18 personal property in maintaining and carrying on such activities are hereby
19 declared to be common nuisances:

- 20 (a) Commercial gambling;
- 21 (b) dealing in gambling devices;
- 22 (c) possession of gambling devices;
- 23 (d) promoting obscenity;
- 24 (e) promoting prostitution;
- 25 (f) habitually promoting prostitution;
- 26 (g) violations of any law regulating controlled substances;
- 27 (h) habitual violations of any law regulating the sale or exchange of
28 alcoholic liquor or cereal malt beverages, by any person not licensed
29 pursuant to chapter 41 of the Kansas Statutes Annotated;
- 30 (i) habitual violations of any law regulating the sale or exchange of
31 cigarettes or tobacco products, by any person not licensed pursuant to
32 article 33 of chapter 79 of the Kansas Statutes Annotated;
- 33 (j) any felony committed for the benefit of, at the direction of, or in
34 association with any criminal street gang, with the specific intent to
35 promote, further or assist in any criminal conduct by gang members. As
36 used in this subsection, "criminal street gang" means any organization,
37 association or group, whether formal or informal:
 - 38 (1) Consisting of three or more persons;
 - 39 (2) having as one of its primary activities the commission of one or
40 more person felonies, person misdemeanors, felony violations of K.S.A.
41 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, any
42 felony violation of any provision of the uniform controlled substances act
43 prior to July 1, 2009, or the comparable juvenile offenses, which if

1 committed by an adult would constitute the commission of such felonies or
2 misdemeanors;

3 (3) which has a common name or common identifying sign or
4 symbol; and

5 (4) whose members, individually or collectively engage in or have
6 engaged in the commission, attempted commission, conspiracy to commit
7 or solicitation of two or more person felonies, person misdemeanors,
8 felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and
9 amendments thereto, any felony violation of any provision of the uniform
10 controlled substances act prior to July 1, 2009, or the comparable juvenile
11 offenses, which if committed by an adult would constitute the commission
12 of such felonies or misdemeanors, or any substantially similar offense
13 from another jurisdiction; ~~or~~

14 **(k) habitual violations of sections 1 through 11, and amendments**
15 **thereto; or**

16 ~~(l)~~ **(l)** use of pyrotechnics, pyrotechnic devices or pyrotechnic
17 materials in violation of K.S.A. 2010 Supp. 31-170, and amendments
18 thereto.

19 Any real property used as a place where any such activities are carried
20 on or permitted to be carried on and any effects, equipment, paraphernalia,
21 fixtures, appliances, musical instruments or other personal property
22 designed for and used on such premises in connection with such unlawful
23 activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-
24 3904, and amendments thereto.

25 Sec. 14. K.S.A. 2010 Supp. 22-3901 is hereby repealed.

26 Sec. 15. This act shall take effect and be in force from and after its
27 publication in the statute book.