

SENATE BILL No. 358

By Senators Arpke, Abrams, Apple, Donovan, Holmes, Knox, LaTurner, Love, Lynn, Masterson, O'Donnell, Olson, Petersen, Pettey, Pilcher-Cook, Powell, Pyle and Smith

2-10

1 AN ACT establishing the community defense act; amending K.S.A. 2013
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. The purpose of the community defense act is to regulate
9 sexually oriented businesses in order to promote the health, safety and
10 general welfare of the citizens of Kansas, and to establish reasonable and
11 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 New Sec. 3. As used in sections 1 through 11, and amendments
22 thereto, the following words and phrases shall have the following
23 meanings unless a different meaning clearly appears from the context:

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

31 (b) "Adult bookstore or adult video store" means a commercial
32 establishment which, as one of its principal business activities, offers for
33 sale or rental for any form of consideration any one or more of the
34 following items: Books, magazines, periodicals or other printed matter, or

1 photographs, films, motion pictures, video cassettes, compact discs, digital
2 video discs, slides or other visual representations which are characterized
3 by their emphasis upon the display of specified sexual activities or
4 specified anatomical areas. For purposes of this subsection, a principal
5 business activity exists where the commercial establishment:

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

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

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

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

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

16 (6) maintains an adult arcade.

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

21 (d) "Adult motion picture theater" means a commercial establishment
22 where films, motion pictures, video cassettes, slides or similar
23 photographic reproductions, which are characterized by their emphasis
24 upon the display of specified sexual activities or specified anatomical
25 areas, are regularly shown to more than five persons for any form of
26 consideration.

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

29 (f) "Employ, employee and employment" means any person who
30 performs any service on the premises of a sexually oriented business, on a
31 full-time, part-time or contract basis, whether or not the person is
32 denominated an employee, independent contractor, agent or otherwise.
33 "Employee" does not mean a person exclusively on the premises for repair
34 or maintenance of the premises or for the delivery of goods to the
35 premises.

36 (g) "Establish or establishment" means and includes any of the
37 following:

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

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

42 (3) the addition of any sexually oriented business to any other
43 existing sexually oriented business.

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

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

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

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

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

15 (j) "Operator" means any person on the premises of a sexually
16 oriented business who causes the business to function or who puts or keeps
17 in operation the business or who is authorized to manage the business or
18 exercise overall operational control of the business premises. A person
19 may be found to be operating or causing to be operated a sexually oriented
20 business whether or not that person is an owner, part owner or licensee of
21 the business.

22 (k) "Person" means any individual, partnership, corporation,
23 association or other legal business entity.

24 (l) "Premises" means the real property upon which the sexually
25 oriented business is located, and all appurtenances thereto and buildings
26 thereon, including, but not limited to, the sexually oriented business, the
27 grounds, private walkways, parking lots and parking garages adjacent
28 thereto, under the ownership, control or supervision of the licensee, as
29 described in the application for a sexually oriented business license.

30 (m) "Regularly" means and refers to the consistent and repeated
31 doing of the act so described.

32 (n) "Semi-nude or state of semi-nudity" means the showing of the
33 female breast below a horizontal line across the top of the areola and
34 extending across the width of the breast at that point or the showing of the
35 male or female buttocks. This definition shall include the lower portion of
36 the human female breast, but shall not include any portion of the cleavage
37 of the human female breasts exhibited by a bikini, dress, blouse, shirt,
38 leotard or similar wearing apparel provided the areola is not exposed in
39 whole or in part.

40 (o) "Semi-nude model studio" means a place where persons regularly
41 appear in a state of semi-nudity for money or any form of consideration in
42 order to be observed, sketched, drawn, painted, sculptured, photographed
43 or similarly depicted by other persons. "Semi-nude model studio" does not

1 mean any place where persons appearing in a state of semi-nudity did so in
2 a modeling class operated:

3 (1) By a postsecondary educational institution, as defined in K.S.A.
4 74-3201b, and amendments thereto, supported entirely or partly by state
5 moneys;

6 (2) by a private postsecondary educational institution, as defined in
7 K.S.A. 2013 Supp. 74-32,163, and amendments thereto, supported entirely
8 or partly by state moneys; or

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

13 (p) "Sexual device" means any three dimensional object designed and
14 marketed for stimulation of the male or female human genitals, anus,
15 female breast or for sadomasochistic use or abuse of oneself or others and
16 shall include devices such as dildos, vibrators, penis pumps and physical
17 representations of the human genital organs. Nothing in this definition
18 shall be construed to include devices primarily intended for protection
19 against sexually transmitted diseases or for preventing pregnancy.

20 (q) "Sexual device shop" means a commercial establishment that
21 regularly features sexual devices. Nothing in this definition shall be
22 construed to include any pharmacy, drug store, medical clinic or any
23 establishment primarily dedicated to providing medical or healthcare
24 products or services, nor shall this definition be construed to include
25 commercial establishments which do not restrict access to their premises
26 by reason of age.

27 (r) "Sexual encounter center" means a business or commercial
28 enterprise that, as one of its principal business purposes, purports to offer
29 for any form of consideration, physical contact in the form of wrestling or
30 tumbling between persons of the opposite sex when one or more of the
31 persons is semi-nude.

32 (s) "Sexually oriented business" means an adult arcade, an adult
33 bookstore or adult video store, an adult cabaret, an adult motion picture
34 theater, a semi-nude model studio, a sexual device shop or a sexual
35 encounter center.

36 (t) "Specified anatomical areas" means and includes:

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

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

42 (u) "Specified criminal activity" means any of the following specified
43 offenses, by a person who, within the preceding eight years, has been

1 convicted of, or released from confinement for:

2 (1) Any offense set forth in K.S.A. 2013 Supp. 21-5503, 21-5504, 21-
3 5505, 21-5506, 21-5507, 21-5508, 21-5509, 21-5510, 21-5511, 21-5512,
4 21-5513, 21-6419, 21-6420 and 21-6421, and amendments thereto;

5 (2) any offense set forth in K.S.A. 2013 Supp. 21-6401 and 21-6402,
6 and amendments thereto;

7 (3) any offense set forth in K.S.A. 2013 Supp. 21-5701 et seq., and
8 amendments thereto;

9 (4) a crime in effect prior to July 1, 2011, which is substantially the
10 same as a crime listed in paragraphs (1), (2) and (3);

11 (5) any offense set forth in K.S.A. 79-3228, and amendments thereto,
12 or any other provision of law which prescribes criminal conduct with
13 regard to the Kansas income tax act;

14 (6) any attempt, solicitation or conspiracy to commit an offense in
15 paragraphs (1) through (4); or

16 (7) any offense under the laws of another jurisdiction which is
17 substantially the same as an offense in paragraphs (1) through (5).

18 (v) "Specified sexual activity" means any of the following:

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

20 (2) excretory functions as a part of or in connection with any of the
21 activities described in paragraph (1).

22 (w) "Substantial" means at least 30% of the items so modified.

23 (x) "Viewing room" means the room, booth or area where a patron of
24 a sexually oriented business would ordinarily be positioned while
25 watching a film, video cassette, digital video disc or other video
26 reproduction.

27 New Sec. 4. (a) No person shall establish a sexually oriented business
28 within 1,000 feet of any preexisting accredited public or private
29 elementary or secondary school, house of worship, state-licensed day care
30 facility, public library, public park, residence or another sexually oriented
31 business. For purposes of this subsection, measurements shall be made in a
32 straight line, without regard to intervening structures or objects, from the
33 closest portion of the parcel containing the sexually oriented business to
34 the closest portion of the parcel containing the preexisting elementary or
35 secondary school, house of worship, state-licensed day care facility, public
36 library, public park, residence or another sexually oriented business. This
37 subsection shall not apply to any sexually oriented business lawfully
38 established prior to the effective date of this act.

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

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

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

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

9 New Sec. 6. (a) A sexually oriented business which exhibits on the
10 premises, through any mechanical or electronic image-producing device, a
11 film, video cassette, digital video disk or other video reproduction
12 characterized by an emphasis on the display of specified sexual activities
13 or specified anatomical areas shall comply with the following
14 requirements:

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

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

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

27 (b) It shall be the duty of the operator to ensure that at least one
28 employee is on duty and situated in an operator's station at all times that
29 any patron is on the portion of the premises monitored by that operator
30 station. It shall be the duty of the operator, and it shall also be the duty of
31 any employee present on the premises, to ensure that the view area
32 specified in subsection (a) remains unobstructed by any doors, curtains,
33 walls, merchandise, display racks or other materials or enclosures at all
34 times that any patron is present on the premises.

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

43 New Sec. 8. (a) No operator shall allow or permit a sexually oriented

1 business to be or remain open between the hours of 12 midnight and 6 a.m.
2 on any day.

3 (b) No person shall knowingly or intentionally sell, use or consume
4 alcoholic beverages on the premises of a sexually oriented business.

5 (c) No person shall knowingly allow a person under the age of 18
6 years on the premises of a sexually oriented business.

7 New Sec. 9. For the purposes of sections 1 through 11, and
8 amendments thereto, it shall be a defense to liability for an officer,
9 director, general partner or a person who managed, supervised or
10 controlled the operation of the sexually oriented business: (a) That the act
11 which forms the basis for the violation was committed by an employee and
12 that such officer, director, general partner or a person who managed,
13 supervised or controlled the operation of the sexually oriented business did
14 not knowingly or recklessly allow such act by the employee; or (b) to
15 whom liability is imputed was powerless to prevent the act of an
16 employee, which act forms the basis for the violation.

17 New Sec. 10. Any person violating or refusing to comply with any of
18 the provisions of sections 1 through 11, and amendments thereto, shall be
19 guilty of a class C misdemeanor. Each day that a violation is permitted to
20 exist or occur, and each separate occurrence, shall constitute a separate
21 offense.

22 New Sec. 11. If any provision of sections 1 through 11, and
23 amendments thereto, or the application thereof to any persons or
24 circumstances is held to be invalid, such invalidity shall not affect other
25 provisions or application of sections 1 through 11, and amendments
26 thereto, and to this end the provisions of sections 1 through 11, and
27 amendments thereto, are declared to be severable.

28 Sec. 12. K.S.A. 2013 Supp. 22-3901 is hereby amended to read as
29 follows: 22-3901. The following unlawful activities and the use of real or
30 personal property in maintaining and carrying on such activities are hereby
31 declared to be common nuisances:

- 32 (a) Commercial gambling;
33 (b) dealing in gambling devices;
34 (c) possession of gambling devices;
35 (d) promoting obscenity;
36 (e) promoting the sale of sexual relations;
37 (f) commercial sexual exploitation of a child;
38 (g) violations of any law regulating controlled substances;
39 (h) habitual violations of any law regulating the sale or exchange of
40 alcoholic liquor or cereal malt beverages, by any person not licensed
41 pursuant to chapter 41 of the Kansas Statutes Annotated, and amendments
42 thereto;
43 (i) habitual violations of any law regulating the sale or exchange of

1 cigarettes or tobacco products, by any person not licensed pursuant to
2 article 33 of chapter 79 of the Kansas Statutes Annotated, and amendments
3 thereto;

4 (j) any felony committed for the benefit of, at the direction of, or in
5 association with any criminal street gang, with the specific intent to
6 promote, further or assist in any criminal conduct by gang members. As
7 used in this subsection, "criminal street gang" means any organization,
8 association or group, whether formal or informal:

9 (1) Consisting of three or more persons;

10 (2) having as one of its primary activities the commission of one or
11 more person felonies, person misdemeanors, felony violations of K.S.A.
12 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, article 57
13 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto,
14 any felony violation of any provision of the uniform controlled substances
15 act prior to July 1, 2009, or the comparable juvenile offenses, which if
16 committed by an adult would constitute the commission of such felonies or
17 misdemeanors;

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

20 (4) whose members, individually or collectively engage in or have
21 engaged in the commission, attempted commission, conspiracy to commit
22 or solicitation of two or more person felonies, person misdemeanors,
23 felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior
24 to their transfer, article 57 of chapter 21 of the Kansas Statutes Annotated,
25 and amendments thereto, any felony violation of any provision of the
26 uniform controlled substances act prior to July 1, 2009, or the comparable
27 juvenile offenses, which if committed by an adult would constitute the
28 commission of such felonies or misdemeanors, or any substantially similar
29 offense from another jurisdiction; ~~or~~

30 (k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials
31 in violation of K.S.A. 2013 Supp. 31-170, and amendments thereto; *or*

32 (l) *habitual violations of any law regulating sexually oriented*
33 *businesses, including violations of sections 4 through 11, and amendments*
34 *thereto.*

35 Any real property used as a place where any such activities are carried
36 on or permitted to be carried on and any effects, equipment, paraphernalia,
37 fixtures, appliances, musical instruments or other personal property
38 designed for and used on such premises in connection with such unlawful
39 activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-
40 3904, and amendments thereto.

41 Sec. 13. K.S.A. 2013 Supp. 22-3901 is hereby repealed.

42 Sec. 14. This act shall take effect and be in force from and after its
43 publication in the statute book.