

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,
10 safety and general welfare of the citizens of Kansas, and to establish
11 reasonable and uniform regulations to prevent the deleterious secondary
12 effects of sexually oriented businesses within the state. The provisions of
13 this act have neither the purpose nor effect of imposing a limitation or
14 restriction on the content or reasonable access to any communicative
15 materials, including sexually oriented materials. Similarly, it is neither the
16 intent nor effect of this act to restrict or deny access by adults to sexually
17 oriented materials protected by the first amendment, or to deny access by
18 the distributors and exhibitors of sexually oriented entertainment to their
19 intended market. Neither is it the intent nor effect of this act to condone
20 or 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
33 an unnecessary concentration of sexually oriented businesses in one area.

34 (3) Each of the foregoing negative secondary effects constitutes a
35 harm which the state has substantial interest in preventing or abating.
36 Such substantial government interest is preventing secondary effects,

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

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

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

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

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

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

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

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

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

35 (6) maintains an adult arcade.

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

40 (d) "Adult motion picture theater" means a commercial
41 establishment where films, motion pictures, video cassettes, slides or
42 similar photographic reproductions, which are characterized by their
43 emphasis upon the display of specified sexual activities or specified

1 anatomical areas, are regularly shown to more than five persons for any
2 form of consideration.

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

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

12 (g) "Establish or establishment" means and includes any of the
13 following:

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

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

18 (3) the addition of any sexually oriented business to any other
19 existing sexually oriented business.

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

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

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

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

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

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

42 (k) "Premises" means the real property upon which the sexually
43 oriented business is located, and all appurtenances thereto and buildings

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

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

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

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

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

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

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

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

38 (p) "Sexual device shop" means a commercial establishment that
39 regularly features sexual devices. Nothing in this definition shall be
40 construed to include any pharmacy, drug store, medical clinic or any
41 establishment primarily dedicated to providing medical or healthcare
42 products or services, nor shall this definition be construed to include
43 commercial establishments which do not restrict access to their premises

1 by reason of age.

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

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

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

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

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

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

20 (1) Any offense set forth in sections 67, 68, 69, 70, 71, 72, 73, 74,
21 75, 76, 77, 229, 230 and 231 of chapter 136 of the 2010 session laws of
22 Kansas, and amendments thereto;

23 (2) any offense set forth in section 212 or 213 of chapter 136 of the
24 2010 session laws of Kansas, and amendments thereto;

25 (3) any offense set forth in K.S.A. 2010 Supp 21-36a01 through 21-
26 36a17, and amendments thereto;

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

30 (5) any attempt, solicitation or conspiracy to commit an offense in
31 paragraphs (1) through (4); or

32 (6) any offense under the laws of another jurisdiction which is
33 substantially the same as an offense in paragraphs (1) through (5).

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

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

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

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

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

43 New Sec. 4. (a) No person shall establish a sexually oriented

1 business within 1,000 feet of any preexisting accredited public or private
2 elementary or secondary school, house of worship, state-licensed day care
3 facility, public library, public park, residence or other sexually oriented
4 business. This subsection shall not apply to any sexually oriented
5 business lawfully established prior to the effective date of this act. For
6 purposes of this subsection, measurements shall be made in a straight
7 line, without regard to intervening structures or objects, from the closest
8 portion of the parcel containing the sexually oriented business to the
9 closest portion of the parcel containing the preexisting elementary or
10 secondary school, house of worship, state-licensed day care facility,
11 public library, public park, residence or other sexually oriented business.
12 This subsection shall not apply to any sexually oriented business lawfully
13 established prior to the effective date of this act.

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

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

19 (b) No employee shall knowingly or intentionally, in a sexually
20 oriented business, appear in a semi-nude condition unless the employee,
21 while semi-nude, shall be and remain on a fixed stage at least six feet
22 from all patrons and at least 18 inches from the floor in a room of at least
23 600 square feet.

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

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

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

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

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

1 line of sight from the operator's station.

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

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

18 New Sec. 8. (a) No operator shall allow or permit a sexually oriented
19 business to be or remain open between the hours of 12:00 midnight and
20 6:00 a.m. on any day.

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

23 (c) No person shall knowingly or intentionally sell, use or consume
24 alcoholic or cereal malt beverages on the premises of a sexually oriented
25 business.

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

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

41 New Sec. 11. If any provision of sections 1 through 11, and
42 amendments thereto, or the application thereof to any persons or
43 circumstances is held to be invalid, such invalidity shall not affect other

1 provisions or application of sections 1 through 11, and amendments
2 thereto, and to this end the provisions of sections 1 through 11, and
3 amendments thereto, are declared to be severable.

4 New Sec. 12. Nothing in this act shall prevent any city or county
5 from enacting or enforcing any local ordinance or resolution concerning
6 the regulation of sexually oriented businesses or similar adult oriented
7 businesses which is stricter than but not inconsistent with the act.

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

- 12 (a) Commercial gambling;
- 13 (b) dealing in gambling devices;
- 14 (c) possession of gambling devices;
- 15 (d) promoting obscenity;
- 16 (e) promoting prostitution;
- 17 (f) habitually promoting prostitution;
- 18 (g) violations of any law regulating controlled substances;
- 19 (h) habitual violations of any law regulating the sale or exchange of
20 alcoholic liquor or cereal malt beverages, by any person not licensed
21 pursuant to chapter 41 of the Kansas Statutes Annotated;
- 22 (i) habitual violations of any law regulating the sale or exchange of
23 cigarettes or tobacco products, by any person not licensed pursuant to
24 article 33 of chapter 79 of the Kansas Statutes Annotated;
- 25 (j) any felony committed for the benefit of, at the direction of, or in
26 association with any criminal street gang, with the specific intent to
27 promote, further or assist in any criminal conduct by gang members. As
28 used in this subsection, "criminal street gang" means any organization,
29 association or group, whether formal or informal:

- 30 (1) Consisting of three or more persons;

- 31 (2) having as one of its primary activities the commission of one or
32 more person felonies, person misdemeanors, felony violations of K.S.A.
33 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, any
34 felony violation of any provision of the uniform controlled substances act
35 prior to July 1, 2009, or the comparable juvenile offenses, which if
36 committed by an adult would constitute the commission of such felonies
37 or misdemeanors;

- 38 (3) which has a common name or common identifying sign or
39 symbol; and

- 40 (4) whose members, individually or collectively engage in or have
41 engaged in the commission, attempted commission, conspiracy to commit
42 or solicitation of two or more person felonies, person misdemeanors,
43 felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and

1 amendments thereto, any felony violation of any provision of the uniform
2 controlled substances act prior to July 1, 2009, or the comparable juvenile
3 offenses, which if committed by an adult would constitute the
4 commission of such felonies or misdemeanors, or any substantially
5 similar offense from another jurisdiction; or

6 (k) use of pyrotechnics, pyrotechnic devices or pyrotechnic
7 materials in violation of K.S.A. 2010 Supp. 31-170, and amendments
8 thereto.

9 Any real property used as a place where any such activities are carried
10 on or permitted to be carried on and any effects, equipment,
11 paraphernalia, fixtures, appliances, musical instruments or other personal
12 property designed for and used on such premises in connection with such
13 unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-
14 3903 and 22-3904, and amendments thereto.

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

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