

SENATE BILL No. 246

By Committee on Federal and State Affairs

3-29

1 AN ACT concerning the regulation of sexually oriented businesses;
2 relating to the location thereof.

3

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

5 Section 1. (a) As used in this section the following words and
6 phrases shall have the following meanings unless a different meaning
7 clearly appears from the context:

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

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

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

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

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

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

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

34 (F) maintains an adult arcade.

35 (3) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle
36 club or other commercial establishment, regardless of whether alcoholic

1 beverages are served, which regularly features persons who appear semi-
2 nude.

3 (4) "Adult motion picture theater" means a commercial establishment
4 where films, motion pictures, video cassettes, slides or similar
5 photographic reproductions, which are characterized by their emphasis
6 upon the display of specified sexual activities or specified anatomical
7 areas, are regularly shown to more than five persons for any form of
8 consideration.

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

11 (6) "Establish or establishment" means and includes any of the
12 following:

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

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

17 (C) the addition of any sexually oriented business to any other
18 existing sexually oriented business.

19 (7) "Semi-nude or state of semi-nudity" means the showing of the
20 female breast below a horizontal line across the top of the areola and
21 extending across the width of the breast at that point or the showing of the
22 male or female buttocks. This definition shall include the lower portion of
23 the human female breast, but shall not include any portion of the cleavage
24 of the human female breasts exhibited by a bikini, dress, blouse, shirt,
25 leotard or similar wearing apparel provided the areola is not exposed in
26 whole or in part.

27 (8) "Semi-nude model studio" means a place where persons regularly
28 appear in a state of semi-nudity for money or any form of consideration in
29 order to be observed, sketched, drawn, painted, sculptured, photographed
30 or similarly depicted by other persons. "Semi-nude model studio" does not
31 mean any place where persons appearing in a state of semi-nudity did so in
32 a modeling class operated:

33 (A) By a postsecondary educational institution, as defined in K.S.A.
34 74-3201b, and amendments thereto, supported entirely or partly by state
35 moneys;

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

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

43 (9) "Sexual device" means any three dimensional object designed and

1 marketed for stimulation of the male or female human genitals, anus,
2 female breast or for sadomasochistic use or abuse of oneself or others and
3 shall include devices such as dildos, vibrators, penis pumps and physical
4 representations of the human genital organs. Nothing in this definition
5 shall be construed to include devices primarily intended for protection
6 against sexually transmitted diseases or for preventing pregnancy.

7 (10) "Sexual device shop" means a commercial establishment that
8 regularly features sexual devices. Nothing in this definition shall be
9 construed to include any pharmacy, drug store, medical clinic or any
10 establishment primarily dedicated to providing medical or healthcare
11 products or services, nor shall this definition be construed to include
12 commercial establishments which do not restrict access to their premises
13 by reason of age.

14 (11) "Sexual encounter center" means a business or commercial
15 enterprise that, as one of its principal business purposes, purports to offer
16 for any form of consideration, physical contact in the form of wrestling or
17 tumbling between persons of the opposite sex when one or more of the
18 persons is semi-nude.

19 (12) "Sexually oriented business" means an adult arcade, an adult
20 bookstore or adult video store, an adult cabaret, an adult motion picture
21 theater, a semi-nude model studio, a sexual device shop or a sexual
22 encounter center.

23 (13) "Specified anatomical areas" means and includes:

24 (A) Less than completely and opaquely covered: Human genitals;
25 pubic region; buttock; and female breast below a point immediately above
26 the top of the areola; and

27 (B) human male genitals in a discernibly turgid state, even if
28 completely and opaquely covered.

29 (14) "Specified sexual activity" means any of the following:

30 (A) Intercourse, oral copulation, masturbation or sodomy; or

31 (B) excretory functions as a part of or in connection with any of the
32 activities described in paragraph (A).

33 (15) "Substantial" means at least 30% of the items so modified.

34 (b) No person shall establish a sexually oriented business within
35 1,000 feet of any preexisting accredited public or private elementary or
36 secondary school, house of worship, state-licensed day care facility, public
37 library, public park, residence or other sexually oriented business. For
38 purposes of this subsection, measurements shall be made in a straight line,
39 without regard to intervening structures or objects, from the closest
40 property line of the parcel containing the sexually oriented business to the
41 closest property line of the parcel containing the preexisting elementary or
42 secondary school, house of worship, state-licensed day care facility, public
43 library, public park, residence or other sexually oriented business. This

1 subsection shall not apply to any sexually oriented business lawfully
2 established prior to the effective date of this act.

3 (c) Nothing in this section shall prevent any city or county from
4 enacting or enforcing any local ordinance or resolution concerning the
5 regulation of sexually oriented businesses or similar adult oriented
6 businesses which is not in conflict with this section.

7 Sec. 2. This act shall take effect and be in force from and after its
8 publication in the statute book.