

## HOUSE BILL No. 2403

By Committee on Federal and State Affairs

2-18

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1 AN ACT concerning sexually oriented businesses; crimes, punishment and  
2 criminal procedure; prohibiting certain acts; creating criminal penalties  
3 for violations; establishing the community defense act; amending  
4 K.S.A. 2020 Supp. 22-3901 and repealing the existing section.  
5

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

7 New Section 1. (a) The provisions of sections 1 through 7, and  
8 amendments thereto, shall be known and may be cited as the community  
9 defense act.

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

23 New Sec. 2. For the purposes of sections 1 through 7, and  
24 amendments thereto:

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

32 (b) "Adult bookstore or adult video store" means a commercial  
33 establishment that, as one of its principal business activities, offers for sale  
34 or rental for any form of consideration any one or more of the following  
35 items: Books, magazines, periodicals or other printed matter or  
36 photographs, films, motion pictures, video cassettes, compact discs, digital

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

5 (1) Has a substantial portion of such establishment's displayed  
6 merchandise that consists of such items;

7 (2) has a substantial portion of the wholesale value of such  
8 establishment's displayed merchandise that consists of such items;

9 (3) has a substantial portion of the retail value of such establishment's  
10 displayed merchandise that consists of such items;

11 (4) derives a substantial portion of such establishment's revenues  
12 from the sale or rental, for any form of consideration, of such items;

13 (5) maintains a substantial section of such establishment's interior  
14 business space for the sale or rental of such items; or

15 (6) maintains an adult arcade.

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

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

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

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

33 (g) "Establish" or "establishment" means and includes any of the  
34 following:

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

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

39 (3) the addition of any sexually oriented business to any other  
40 existing sexually oriented business.

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

42 (1) The actual power to operate the sexually oriented business or  
43 control the operation, management or policies of the sexually oriented

1 business or legal entity that operates the sexually oriented business;

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

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

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

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

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

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

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

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

37 (o) "Semi-nude model studio" means a place where persons regularly  
38 appear in a state of semi-nudity for money or any form of consideration in  
39 order to be observed, sketched, drawn, painted, sculptured, photographed  
40 or similarly depicted by other persons. "Semi-nude model studio" does not  
41 mean any place where persons appearing in a state of semi-nudity did so in  
42 a modeling class operated:

43 (1) By a postsecondary educational institution, as defined in K.S.A.

1 74-3201b, and amendments thereto, supported entirely or partly by state  
2 moneys;

3 (2) by a private postsecondary educational institution, as defined in  
4 K.S.A. 74-32,163, and amendments thereto, supported entirely or partly by  
5 state moneys; or

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

10 (p) "Sexual device" means any three-dimensional object designed and  
11 marketed for stimulation of the male or female human genitals, anus,  
12 female breast or for sadomasochistic use or abuse of oneself or others and  
13 includes devices such as dildos, vibrators, penis pumps and physical  
14 representations of the human genital organs. "Sexual device" does not  
15 include devices primarily intended for protection against sexually  
16 transmitted diseases or for preventing pregnancy.

17 (q) "Sexual device shop" means a commercial establishment that  
18 regularly features sexual devices. "Sexual device shop" does not include  
19 any pharmacy, drug store, medical clinic, any establishment primarily  
20 dedicated to providing medical or healthcare products or services or any  
21 commercial establishments that do not restrict access to their premises by  
22 reason of age.

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

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

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

33 (1) If less than completely and opaquely covered, human genitals,  
34 pubic region, buttock and female breast below a point immediately above  
35 the top of the areola; and

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

38 (u) "Specified criminal activity" means any of the following specified  
39 offenses by a person who, within the preceding eight years, has been  
40 convicted of or released from confinement for:

41 (1) Any offense set forth in K.S.A. 2020 Supp. 21-5503, 21-5504, 21-  
42 5505, 21-5506, 21-5507, 21-5508, 21-5509, 21-5510, 21-5511, 21-5512,  
43 21-5513, 21-6419, 21-6420 and 21-6421, and amendments thereto;

1 (2) any offense set forth in K.S.A. 2020 Supp. 21-6401 and 21-6402,  
2 and amendments thereto;

3 (3) any offense set forth in K.S.A. 2020 Supp. 21-5701 et seq., and  
4 amendments thereto;

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

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

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

12 (7) any offense under the laws of another jurisdiction that is  
13 substantially the same as an offense in paragraphs (1) through (5).

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

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

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

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

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

23 New Sec. 3. (a) No person shall establish a sexually oriented business  
24 within 1,000 feet of any preexisting accredited public or private  
25 elementary or secondary school, house of worship, state-licensed day care  
26 facility, public library, public park, residence or other sexually oriented  
27 business. For purposes of this subsection, measurements shall be made in a  
28 straight line, without regard to intervening structures or objects, from the  
29 closest portion of the parcel containing the sexually oriented business to  
30 the closest portion of the parcel containing the preexisting elementary or  
31 secondary school, house of worship, state-licensed day care facility, public  
32 library, public park, residence or other sexually oriented business. This  
33 subsection shall not apply to any sexually oriented business lawfully  
34 established prior to the effective date of this act.

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

38 New Sec. 4. (a) No person shall knowingly or intentionally appear in  
39 a state of nudity in a sexually oriented business.

40 (b) No employee shall knowingly or intentionally appear in a semi-  
41 nude condition in a sexually oriented business unless the employee, while  
42 semi-nude, shall be and remain on a fixed stage at least six feet from all  
43 patrons and at least 18 inches from the floor in a room of at least 600

1 square feet.

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

4 (d) A sexually oriented business that exhibits on the premises,  
5 through any mechanical or electronic image-producing device, a film,  
6 video cassette, digital video disk or other video reproduction characterized  
7 by an emphasis on the display of specified sexual activities or specified  
8 anatomical areas shall comply with the following requirements:

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

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

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

21 (e) It shall be the duty of the operator to ensure that at least one  
22 employee is on duty and situated in an operator's station at all times that  
23 any patron is on the portion of the premises monitored by that operator  
24 station. It shall be the duty of the operator, and it shall also be the duty of  
25 any employee present on the premises, to ensure that the view area  
26 specified in subsection (d) remains unobstructed by any doors, curtains,  
27 walls, merchandise, display racks or other materials or enclosures at all  
28 times that any patron is present on the premises.

29 (f) Sexually oriented businesses that do not have stages or interior  
30 configurations that meet the minimum requirements of this section shall be  
31 given 180 days from the effective date of this act to comply with such  
32 stage and building requirements. During such time period, any employee  
33 who appears within view of any patron in a state of semi-nudity shall  
34 remain, while semi-nude, at least six feet away from all patrons.

35 (g) (1) No operator shall allow or permit a sexually oriented business  
36 to be or remain open between the hours of 12 midnight and 6 a.m. on any  
37 day.

38 (2) No person shall:

39 (A) Intentionally or knowingly sell, use or consume alcoholic  
40 beverages on the premises of a sexually oriented business; and

41 (B) knowingly allow a person under 18 years of age on the premises  
42 of a sexually oriented business.

43 New Sec. 5. For the purposes of sections 1 through 7, and

1 amendments thereto, it shall be a defense to liability for an officer,  
2 director, general partner or a person who managed, supervised or  
3 controlled the operation of the sexually oriented business that:

4 (a) The act that forms the basis for the violation was committed by an  
5 employee and that such officer, director, general partner or a person who  
6 managed, supervised or controlled the operation of the sexually oriented  
7 business did not knowingly or recklessly allow such act by the employee;  
8 or

9 (b) such officer, director, general partner or a person who managed,  
10 supervised or controlled the operation of the sexually oriented business to  
11 whom liability is imputed, was powerless to prevent the act of an  
12 employee that act forms the basis for the violation.

13 New Sec. 6. Any person violating or refusing to comply with any  
14 provision of sections 1 through 7, and amendments thereto, shall be guilty  
15 of a class C misdemeanor. Each day that a violation is permitted to exist or  
16 occur and each separate occurrence shall constitute a separate offense.

17 New Sec. 7. The provisions of sections 1 through 7, and amendments  
18 thereto, are declared to be severable, and if any provision or the  
19 application thereof to any persons or circumstances is held to be invalid,  
20 such invalidity shall not affect other provisions or applications of this act.

21 Sec. 8. K.S.A. 2020 Supp. 22-3901 is hereby amended to read as  
22 follows: 22-3901. (a) The following unlawful activities and the use of real  
23 or personal property in maintaining and carrying on such activities are  
24 hereby declared to be common nuisances:

- 25 ~~(a)~~(1) Commercial gambling;
- 26 ~~(b)~~(2) dealing in gambling devices;
- 27 ~~(c)~~(3) possession of gambling devices;
- 28 ~~(d)~~(4) promoting obscenity;
- 29 ~~(e)~~(5) promoting the sale of sexual relations;
- 30 ~~(f)~~(6) commercial sexual exploitation of a child;
- 31 ~~(g)~~(7) violations of any law regulating controlled substances;
- 32 ~~(h)~~(8) habitual violations of any law regulating the sale or exchange  
33 of alcoholic liquor or cereal malt beverages, by any person not licensed  
34 pursuant to chapter 41 of the Kansas Statutes Annotated, and amendments  
35 thereto;
- 36 ~~(i)~~(9) habitual violations of any law regulating the sale or exchange of  
37 cigarettes or tobacco products, by any person not licensed pursuant to  
38 article 33 of chapter 79 of the Kansas Statutes Annotated, and amendments  
39 thereto;
- 40 ~~(j)~~(10) any felony committed for the benefit of, at the direction of, or  
41 in association with any criminal street gang, with the specific intent to  
42 promote, further or assist in any criminal conduct by gang members. As  
43 used in this subsection, "criminal street gang" means any organization,

1 association or group, whether formal or informal:

2 ~~(1)~~(A) Consisting of three or more persons;

3 ~~(2)~~(B) having as one of its primary activities the commission of one  
4 or more person felonies, person misdemeanors, felony violations of K.S.A.  
5 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, article 57  
6 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto,  
7 any felony violation of any provision of the uniform controlled substances  
8 act prior to July 1, 2009, or the comparable juvenile offenses, which if  
9 committed by an adult would constitute the commission of such felonies or  
10 misdemeanors;

11 ~~(3)~~(C) which has a common name or common identifying sign or  
12 symbol; and

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

23 ~~(5)~~(I) use of pyrotechnics, pyrotechnic devices or pyrotechnic  
24 materials in violation of K.S.A. 2020 Supp. 31-170, and amendments  
25 thereto; *or*

26 *(12) habitual violations of any law regulating sexually oriented*  
27 *businesses, including violations of sections 1 through 7, and amendments*  
28 *thereto.*

29 *(b) Any real property used as a place where any such activities are*  
30 *carried on or permitted to be carried on and any effects, equipment,*  
31 *paraphernalia, fixtures, appliances, musical instruments or other personal*  
32 *property designed for and used on such premises in connection with such*  
33 *unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-*  
34 *3903 and 22-3904, and amendments thereto.*

35 Sec. 9. K.S.A. 2020 Supp. 22-3901 is hereby repealed.

36 Sec. 10. This act shall take effect and be in force from and after its  
37 publication in the statute book.