

## CHAPTER 140

HOUSE Substitute for SENATE BILL No. 35\*

AN ACT relating to sexually-oriented signs; restricting location thereof on state highways.

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

Section 1. (a) As used in this section:

(1) "Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

(A) Persons who appear in a state of nudity or semi-nudity;

(B) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(C) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(2) "nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state;

(3) "semi-nudity" means a state of dress in which opaque clothing fails to cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple and areola of the female breast below a horizontal line across the top of the areola at its highest point. Semi-nudity shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by wearing apparel provided the areola is not exposed in whole or part;

(4) "sexually-oriented business" means any business which offers its patrons goods of which a substantial portion are sexually-oriented materials. Any business where more than 10% of display space is used for sexually-oriented materials shall be presumed to be a sexually-oriented business;

(5) "sexually-oriented materials" means any textual, pictorial or three dimensional material that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors;

(6) "sign" or "outdoor advertising" means any outdoor sign, display, device, notice, bulletin, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents of which is located within an adjacent area, and is visible from the state highway.

(b) No sign or other outdoor advertising, for an adult cabaret or sexually-oriented business shall be located within one mile of any state highway except if such business is located within one mile of a state highway then the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that the premises are off limits to minors. The identification sign shall be no more than 40 square feet in size and shall include no more than the following information: Name, street address, telephone number and operating hours of the business.

(c) Signs existing at the time of the effective date of this act, which did not conform to the requirements of this section, and amendments thereto, may be allowed to continue as a nonconforming use, but should be made to conform within three years from July 1, 2006.

(d) Any owner of such a business who violates the provisions of this section shall be guilty of a class C misdemeanor. Each week a violation of this section continues to exist shall constitute a separate offense.

(e) This section is designed to protect the following public policy interests of this state, including, but not limited to:

(1) To mitigate the adverse secondary effects of sexually-oriented businesses; (2) to improve traffic safety; (3) to limit harm to minors; and (4) to reduce prostitution, crime, juvenile delinquency, deterioration in property values and lethargy in neighborhood improvement efforts.

(f) The attorney general shall represent the state in all actions and proceedings arising from this section, and amendments thereto. All costs incurred by the attorney general to defend or prosecute this section, in-

cluding payment of all court costs, civil judgments and, if necessary, any attorneys fees, shall be paid from the state general fund.

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

Approved April 18, 2006.

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