

As Amended by House Committee

Session of 2011

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.
2 2010 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
7 community 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
12 secondary effects of sexually oriented businesses within the state. The
13 provisions of this act have neither the purpose nor effect of imposing a
14 limitation or restriction on the content or reasonable access to any
15 communicative materials, including sexually oriented materials.
16 Similarly, it is neither the intent nor effect of this act to restrict or deny
17 access by adults to sexually oriented materials protected by the first
18 amendment, or to deny access by the distributors and exhibitors of
19 sexually oriented entertainment to their intended market. Neither is it
20 the intent nor effect of this act to condone or legitimize the distribution
21 of obscene material.

22 (b) The legislature finds:

23 (1) Sexually oriented businesses, as a category of commercial
24 enterprises, are associated with a wide variety of adverse secondary
25 effects, including, but not limited to, personal property crimes,
26 prostitution, potential spread of disease, lewdness, public indecency,
27 obscenity, illicit drug use and drug trafficking, negative impacts on
28 surrounding properties, urban blight, litter, and sexual assault and
29 exploitation.

30 (2) Sexually oriented businesses should be separated from
31 sensitive land uses to minimize the impact of their secondary effects
32 upon such uses, and should be separated from other sexually oriented
33 businesses, to minimize the secondary effects associated with such uses

1 and to prevent an unnecessary concentration of sexually oriented
2 businesses in one area.

3 (3) Each of the foregoing negative secondary effects constitutes a
4 harm which the state has substantial interest in preventing or abating.
5 Such substantial government interest is preventing secondary effects,
6 which is the state's rationale for this act, and exists independent of any
7 comparative analysis between sexually oriented and nonsexually
8 oriented businesses. Additionally, the state's interest in regulating
9 sexually oriented businesses extends to preventing future secondary
10 effects of current or future sexually oriented businesses that may locate
11 in the state.

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

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

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

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

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

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

39 (4) derives a substantial portion of its revenues from the sale or

- 1 rental, for any form of consideration, of such items;
- 2 (5) maintains a substantial section of its interior business space for
3 the sale or rental of such items; or
- 4 (6) maintains an adult arcade.
- 5 (c) "Adult cabaret" means a nightclub, bar, juice bar, restaurant,
6 bottle club or other commercial establishment, regardless of whether
7 alcoholic beverages are served, which regularly features persons who
8 appear semi-nude.
- 9 (d) "Adult motion picture theater" means a commercial
10 establishment where films, motion pictures, video cassettes, slides or
11 similar photographic reproductions, which are characterized by their
12 emphasis upon the display of specified sexual activities or specified
13 anatomical areas, are regularly shown to more than five persons for any
14 form of consideration.
- 15 (e) "Characterized by" means describing the essential character or
16 dominant theme of an item.
- 17 (f) "Employ, employee and employment" means any person who
18 performs any service on the premises of a sexually oriented business,
19 on a full-time, part-time or contract basis, whether or not the person is
20 denominated an employee, independent contractor, agent or otherwise.
21 "Employee" does not mean a person exclusively on the premises for
22 repair or maintenance of the premises or for the delivery of goods to the
23 premises.
- 24 (g) "Establish or establishment" means and includes any of the
25 following:
- 26 (1) The opening or commencement of any sexually oriented
27 business as a new business;
- 28 (2) the conversion of an existing business, whether or not a
29 sexually oriented business, to any sexually oriented business; or
- 30 (3) the addition of any sexually oriented business to any other
31 existing sexually oriented business.
- 32 (h) "Influential interest" means any of the following:
- 33 (1) The actual power to operate the sexually oriented business or
34 control the operation, management or policies of the sexually oriented
35 business or legal entity which operates the sexually oriented business;
- 36 (2) ownership of a financial interest of 30% or more of a business
37 or of any class of voting securities of a business; or
- 38 (3) holding an office, including, but not limited to, the office of
39 president, vice president, secretary, treasurer, managing member or

1 managing director in a legal entity which operates the sexually oriented
2 business.

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

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

15 (k) "Premises" means the real property upon which the sexually
16 oriented business is located, and all appurtenances thereto and
17 buildings thereon, including, but not limited to, the sexually oriented
18 business, the grounds, private walkways, parking lots and parking
19 garages adjacent thereto, under the ownership, control or supervision of
20 the licensee, as described in the application for a sexually oriented
21 business license.

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

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

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

38 (1) By a postsecondary educational institution, as defined in
39 K.S.A. 74-3201b, and amendments thereto, supported entirely or partly

1 by state moneys;

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

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

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

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

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

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

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

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

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

39 (t) "Specified criminal activity" means any of the following

1 specified offenses, by a person who, within the preceding eight years,
2 has been convicted of, or released from confinement for:

3 (1) Any offense set forth in sections 67, 68, 69, 70, 71, 72, 73, 74,
4 75, 76, 77, 229, 230 and 231 of chapter 136 of the 2010 session laws of
5 Kansas, and amendments thereto;

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

8 (3) any offense set forth in K.S.A. 2010 Supp 21-36a01 through
9 21-36a17, and amendments thereto;

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

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

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

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

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

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

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

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

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

1 prior to the effective date of this act.

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

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

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

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

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

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

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

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

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

1 enclosures at all times that any patron is present on the premises.

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

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

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

15 ~~(c) No person shall knowingly or intentionally sell, use or~~
16 ~~consume alcoholic or cereal malt beverages on the premises of a~~
17 ~~sexually oriented business.~~

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

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

33 New Sec. 11. If any provision of sections 1 through 11, and
34 amendments thereto, or the application thereof to any persons or
35 circumstances is held to be invalid, such invalidity shall not affect other
36 provisions or application of sections 1 through 11, and amendments
37 thereto, and to this end the provisions of sections 1 through 11, and
38 amendments thereto, are declared to be severable.

39 New Sec. 12. Nothing in this act shall prevent any city or county

1 from enacting or enforcing any local ordinance or resolution
2 concerning the regulation of sexually oriented businesses or similar
3 adult oriented businesses which is ~~stricter than but not~~ **consistent not**
4 **in conflict** with the act.

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

- 9 (a) Commercial gambling;
- 10 (b) dealing in gambling devices;
- 11 (c) possession of gambling devices;
- 12 (d) promoting obscenity;
- 13 (e) promoting prostitution;
- 14 (f) habitually promoting prostitution;
- 15 (g) violations of any law regulating controlled substances;
- 16 (h) habitual violations of any law regulating the sale or exchange
17 of alcoholic liquor or cereal malt beverages, by any person not licensed
18 pursuant to chapter 41 of the Kansas Statutes Annotated;
- 19 (i) habitual violations of any law regulating the sale or exchange
20 of cigarettes or tobacco products, by any person not licensed pursuant
21 to article 33 of chapter 79 of the Kansas Statutes Annotated;
- 22 (j) any felony committed for the benefit of, at the direction of, or
23 in association with any criminal street gang, with the specific intent to
24 promote, further or assist in any criminal conduct by gang members. As
25 used in this subsection, "criminal street gang" means any organization,
26 association or group, whether formal or informal:
 - 27 (1) Consisting of three or more persons;
 - 28 (2) having as one of its primary activities the commission of one
29 or more person felonies, person misdemeanors, felony violations of
30 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments
31 thereto, any felony violation of any provision of the uniform controlled
32 substances act prior to July 1, 2009, or the comparable juvenile
33 offenses, which if committed by an adult would constitute the
34 commission of such felonies or misdemeanors;
 - 35 (3) which has a common name or common identifying sign or
36 symbol; and
 - 37 (4) whose members, individually or collectively engage in or have
38 engaged in the commission, attempted commission, conspiracy to
39 commit or solicitation of two or more person felonies, person

1 misdemeanors, felony violations of K.S.A. 2010 Supp. 21-36a01
2 through 21-36a17, and amendments thereto, any felony violation of any
3 provision of the uniform controlled substances act prior to July 1, 2009,
4 or the comparable juvenile offenses, which if committed by an adult
5 would constitute the commission of such felonies or misdemeanors, or
6 any substantially similar offense from another jurisdiction; ~~or~~

7 **(k) habitual violations of sections 1 through 11, and**
8 **amendments thereto; or**

9 ~~(l)~~ **(l)** use of pyrotechnics, pyrotechnic devices or pyrotechnic
10 materials in violation of K.S.A. 2010 Supp. 31-170, and amendments
11 thereto.

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

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

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