

**SENATE BILL No. 352**

By Committee on Federal and State Affairs

1-19

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 and human  
4 trafficking reduction act; amending K.S.A. 2021 Supp. 22-3901 and  
5 repealing the existing section.

6

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

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

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

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

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

35 (b) "Adult bookstore or adult video store" means a commercial  
36 establishment that, as one of its principal business activities, offers for sale

1 or rental for any form of consideration any one or more of the following  
2 items: Books, magazines, periodicals or other printed matter or  
3 photographs, films, motion pictures, video cassettes, compact discs, digital  
4 video discs, slides or other visual representations that are characterized by  
5 their emphasis upon the display of specified sexual activities or specified  
6 anatomical areas. For purposes of this subsection, a principal business  
7 activity exists where the commercial establishment:

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

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

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

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

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

18 (6) maintains an adult arcade.

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

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

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

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

36 (g) "Establish" or "establishment" means and includes any of the  
37 following:

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

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

42 (3) the addition of any sexually oriented business to any other  
43 existing sexually oriented business.

1 (h) "Human trafficking" means the trade of human beings for the  
2 purpose of forced labor, sexual slavery or commercial sexual exploitation.

3 (i) "Influential interest" means any of the following:

4 (1) The actual power to operate the sexually oriented business or  
5 control the operation, management or policies of the sexually oriented  
6 business or legal entity that operates the sexually oriented business;

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

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

13 (j) "Nudity" or "a state of nudity" means the showing of the human  
14 male or female genitals, pubic area, vulva, anus, anal cleft or cleavage  
15 with less than a fully opaque covering, or the showing of the female breast  
16 with less than a fully opaque covering of any part of the nipple and areola.

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

24 (l) "Person" means any individual, partnership, corporation,  
25 association or other legal business entity.

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

32 (n) "Regularly" means and refers to the consistent and repeated doing  
33 of the act so described.

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

42 (p) "Semi-nude model studio" means a place where persons regularly  
43 appear in a state of semi-nudity for money or any form of consideration in

1 order to be observed, sketched, drawn, painted, sculptured, photographed  
2 or similarly depicted by other persons. "Semi-nude model studio" does not  
3 mean any place where persons appearing in a state of semi-nudity did so in  
4 a modeling class operated:

5 (1) By a postsecondary educational institution, as defined in K.S.A.  
6 74-3201b, and amendments thereto, supported entirely or partly by state  
7 moneys;

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

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

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

22 (r) "Sexual device shop" means a commercial establishment that  
23 regularly features sexual devices. "Sexual device shop" does not include  
24 any pharmacy, drug store, medical clinic, any establishment primarily  
25 dedicated to providing medical or healthcare products or services or any  
26 commercial establishments that do not restrict access to their premises by  
27 reason of age.

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

33 (t) "Sexually oriented business" means an adult arcade, an adult  
34 bookstore or adult video store, an adult cabaret, an adult motion picture  
35 theater, a semi-nude model studio, a sexual device shop or a sexual  
36 encounter center.

37 (u) "Specified anatomical areas" means and includes:

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

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

43 (v) "Specified criminal activity" means any of the following specified

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

3 (1) Any offense set forth in K.S.A. 2021 Supp. 21-5426, 21-5503, 21-  
4 5504, 21-5505, 21-5506, 21-5507, 21-5508, 21-5509, 21-5510, 21-5511,  
5 21-5512, 21-5513, 21-6419, 21-6420 and 21-6421, and amendments  
6 thereto;

7 (2) any offense set forth in K.S.A. 2021 Supp. 21-6401 and 21-6402,  
8 and amendments thereto;

9 (3) any offense set forth in K.S.A. 2021 Supp. 21-5701 et seq., and  
10 amendments thereto;

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

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

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

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

20 (w) "Specified sexual activity" means any of the following:

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

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

24 (x) "Substantial" means at least 30% of the items so modified.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) No person shall:

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

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

6 New Sec. 5. For the purposes of sections 1 through 7, and  
7 amendments thereto, it shall be a defense to liability for an officer,  
8 director, general partner or a person who managed, supervised or  
9 controlled the operation of the sexually oriented business that:

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

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

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

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

27 Sec. 8. K.S.A. 2021 Supp. 22-3901 is hereby amended to read as  
28 follows: 22-3901. (a) The following unlawful activities and the use of real  
29 or personal property in maintaining and carrying on such activities are  
30 hereby declared to be common nuisances:

31 ~~(a)~~(1) Commercial gambling;

32 ~~(b)~~(2) dealing in gambling devices;

33 ~~(c)~~(3) possession of gambling devices;

34 ~~(d)~~(4) promoting obscenity;

35 ~~(e)~~(5) promoting the sale of sexual relations;

36 ~~(f)~~(6) commercial sexual exploitation of a child;

37 ~~(g)~~(7) violations of any law regulating controlled substances;

38 ~~(h)~~(8) habitual violations of any law regulating the sale or exchange  
39 of alcoholic liquor or cereal malt beverages, by any person not licensed  
40 pursuant to chapter 41 of the Kansas Statutes Annotated, and amendments  
41 thereto;

42 ~~(i)~~(9) habitual violations of any law regulating the sale or exchange of  
43 cigarettes or tobacco products, by any person not licensed pursuant to

1 article 33 of chapter 79 of the Kansas Statutes Annotated, and amendments  
2 thereto;

3 ~~(10)~~ any felony committed for the benefit of, at the direction of, or  
4 in association with any criminal street gang, with the specific intent to  
5 promote, further or assist in any criminal conduct by gang members. As  
6 used in this subsection, "criminal street gang" means any organization,  
7 association or group, whether formal or informal:

8 ~~(A)~~ Consisting of three or more persons;

9 ~~(B)~~ having as one of its primary activities the commission of one  
10 or more person felonies, person misdemeanors, felony violations of K.S.A.  
11 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, article 57  
12 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto,  
13 any felony violation of any provision of the uniform controlled substances  
14 act prior to July 1, 2009, or the comparable juvenile offenses, which if  
15 committed by an adult would constitute the commission of such felonies or  
16 misdemeanors;

17 ~~(C)~~ which has a common name or common identifying sign or  
18 symbol; and

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

29 ~~(11)~~ use of pyrotechnics, pyrotechnic devices or pyrotechnic  
30 materials in violation of K.S.A. 2021 Supp. 31-170, and amendments  
31 thereto; *or*

32 *(12) habitual violations of any law regulating sexually oriented*  
33 *businesses, including violations of sections 1 through 7, and amendments*  
34 *thereto.*

35 *(b)* Any real property used as a place where any such activities are  
36 carried on or permitted to be carried on and any effects, equipment,  
37 paraphernalia, fixtures, appliances, musical instruments or other personal  
38 property designed for and used on such premises in connection with such  
39 unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-  
40 3903 and 22-3904, and amendments thereto.

41 Sec. 9. K.S.A. 2021 Supp. 22-3901 is hereby repealed.

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