

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2144

By Committee on Judiciary

1-29

10 AN ACT establishing the community defense act; amending K.S.A. 22-
11 3901 and repealing the existing section.

12

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

14 New Section 1. The provisions of sections 1 through 11, and amend-
15 ments thereto, shall be known and may be cited as the community defense
16 act.

17 New Sec. 2. The purpose of the community defense act is to regulate
18 sexually oriented businesses in order to promote the health, safety and
19 general welfare of the citizens of Kansas, and to establish reasonable and
20 uniform regulations to prevent the deleterious secondary effects of sex-
21 ually oriented businesses within the state. The provisions of this act have
22 neither the purpose nor effect of imposing a limitation or restriction on
23 the content or reasonable access to any communicative materials, includ-
24 ing sexually oriented materials. Similarly, it is neither the intent nor effect
25 of this act to restrict or deny access by adults to sexually oriented materials
26 protected by the first amendment, or to deny access by the distributors
27 and exhibitors of sexually oriented entertainment to their intended mar-
28 ket. Neither is it the intent nor effect of this act to condone or legitimize
29 the distribution of obscene material.

30 New Sec. 3. As used in sections 1 through 11, and amendments
31 thereto, the following words and phrases shall have the following mean-
32 ings unless a different meaning clearly appears from the context:

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

40 (b) "Adult bookstore or adult video store" means a commercial es-
41 tablishment which, as one of its principal business activities, offers for
42 sale or rental for any form of consideration any one or more of the fol-
43 lowing items: Books, magazines, periodicals or other printed matter, or

- 1 photographs, films, motion pictures, video cassettes, compact discs, digital
2 video discs, slides or other visual representations which are characterized
3 by their emphasis upon the display of specified sexual activities or spec-
4 ified anatomical areas. For purposes of this subsection, a principal busi-
5 ness activity exists where the commercial establishment:
- 6 (1) Has a substantial portion of its displayed merchandise which con-
7 sists of such items;
 - 8 (2) has a substantial portion of the wholesale value of its displayed
9 merchandise which consists of such items;
 - 10 (3) has a substantial portion of the retail value of its displayed mer-
11 chandise which consists of such items;
 - 12 (4) derives a substantial portion of its revenues from the sale or rental,
13 for any form of consideration, of such items;
 - 14 (5) maintains a substantial section of its interior business space for
15 the sale or rental of such items; or
 - 16 (6) maintains an adult arcade.
- 17 (c) “Adult cabaret” means a nightclub, bar, juice bar, restaurant, bot-
18 tle club or other commercial establishment, regardless of whether alco-
19 holic beverages are served, which regularly features persons who appear
20 semi-nude.
- 21 (d) “Adult motion picture theater” means a commercial establish-
22 ment where films, motion pictures, video cassettes, slides or similar pho-
23 tographic reproductions, which are characterized by their emphasis upon
24 the display of specified sexual activities or specified anatomical areas, are
25 regularly shown to more than five persons for any form of consideration.
- 26 (e) “Characterized by” means describing the essential character or
27 dominant theme of an item. For purposes of sections 1 through 11, and
28 amendments thereto, no business shall be classified as a sexually oriented
29 business by virtue of showing, selling or renting materials rated NC-17
30 or R by the motion picture association of America.
- 31 (f) “Employ, employee and employment” means any person who per-
32 forms any service on the premises of a sexually oriented business, on a
33 full-time, part-time or contract basis, whether or not the person is de-
34 nominated an employee, independent contractor, agent or otherwise.
35 “Employee” does not mean a person exclusively on the premises for re-
36 pair or maintenance of the premises or for the delivery of goods to the
37 premises.
- 38 (g) “Establish or establishment” means and includes any of the
39 following:
- 40 (1) The opening or commencement of any sexually oriented business
41 as a new business;
 - 42 (2) the conversion of an existing business, whether or not a sexually
43 oriented business, to any sexually oriented business; or

- 1 (3) the addition of any sexually oriented business to any other existing
2 sexually oriented business.
- 3 (h) “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 which 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 pres-
10 ident, vice president, secretary, treasurer, managing member or managing
11 director in a legal entity which operates the sexually oriented business.
- 12 (i) “Nudity or a state of nudity” means the showing of the human
13 male or female genitals, pubic area, vulva, anus, anal cleft or cleavage
14 with less than a fully opaque covering, or the showing of the female breast
15 with less than a fully opaque covering of any part of the nipple and areola.
- 16 (j) “Operator” means any person on the premises of a sexually ori-
17 ented business who causes the business to function or who puts or keeps
18 in operation the business or who is authorized to manage the business or
19 exercise overall operational control of the business premises. A person
20 may be found to be operating or causing to be operated a sexually oriented
21 business whether or not that person is an owner, part owner or licensee
22 of the business.
- 23 (k) “Person” means any individual, partnership, corporation, associ-
24 ation or other legal business entity.
- 25 (l) “Premises” means the real property upon which the sexually ori-
26 ented business is located, and all appurtenances thereto and buildings
27 thereon, including, but not limited to, the sexually oriented business, the
28 grounds, private walkways, parking lots and parking garages adjacent
29 thereto, under the ownership, control or supervision of the licensee, as
30 described in the application for a sexually oriented business license.
- 31 (m) “Regularly” means and refers to the consistent and repeated do-
32 ing of the act so described.
- 33 (n) “Semi-nude or state of semi-nudity” means the showing of the
34 female breast below a horizontal line across the top of the areola and
35 extending across the width of the breast at that point or the showing of
36 the male or female buttocks. This definition shall include the lower por-
37 tion of the human female breast, but shall not include any portion of the
38 cleavage of the human female breasts exhibited by a bikini, dress, blouse,
39 shirt, leotard or similar wearing apparel provided the areola is not exposed
40 in whole or in part.
- 41 (o) “Semi-nude model studio” means a place where persons regularly
42 appear in a state of semi-nudity for money or any form of consideration
43 in order to be observed, sketched, drawn, painted, sculptured, photo-

- 1 graphed or similarly depicted by other persons. “Semi-nude model stu-
2 dio” does not mean any place where persons appearing in a state of semi-
3 nudity did so in a modeling class operated:
- 4 (1) By a postsecondary educational institution, as defined in K.S.A.
5 74-3201b, and amendments thereto, supported entirely or partly by state
6 moneys;
- 7 (2) by a private postsecondary educational institution, as defined in
8 K.S.A. 2008 Supp. 74-32,163, and amendments thereto, supported en-
9 tirely or partly by state moneys; or
- 10 (3) in a structure which has no sign visible from the exterior of the
11 structure and no other advertising that indicates a semi-nude person is
12 available for viewing, and where, in order to participate in a class, a stu-
13 dent must enroll at least three days in advance of the class.
- 14 (p) “Sexual device” means any three dimensional object designed and
15 marketed for stimulation of the male or female human genitals, anus,
16 female breast or for sadomasochistic use or abuse of oneself or others
17 and shall include devices such as dildos, vibrators, penis pumps and phys-
18 ical representations of the human genital organs. Nothing in this defini-
19 tion shall be construed to include devices primarily intended for protec-
20 tion against sexually transmitted diseases or for preventing pregnancy.
- 21 (q) “Sexual device shop” means a commercial establishment that reg-
22 ularly features sexual devices. Nothing in this definition shall be construed
23 to include any pharmacy, drug store, medical clinic or any establishment
24 primarily dedicated to providing medical or healthcare products or serv-
25 ices, nor shall this definition be construed to include commercial estab-
26 lishments which do not restrict access to their premises by reason of age.
- 27 (r) “Sexual encounter center” means a business or commercial en-
28 terprise that, as one of its principal business purposes, purports to offer
29 for any form of consideration, physical contact in the form of wrestling
30 or tumbling between persons of the opposite sex when one or more of
31 the persons is semi-nude.
- 32 (s) “Sexually oriented business” means an adult arcade, an adult
33 bookstore or adult video store, an adult cabaret, an adult motion picture
34 theater, a semi-nude model studio, a sexual device shop or a sexual en-
35 counter center.
- 36 (t) “Specified anatomical areas” means and includes:
- 37 (1) Less than completely and opaquely covered: Human genitals; pu-
38 bic region; buttock; and female breast below a point immediately above
39 the top of the areola; and
- 40 (2) human male genitals in a discernibly turgid state, even if com-
41 pletely and opaquely covered.
- 42 (u) “Specified criminal activity” means any of the following specified
43 offenses, by a person who, within the preceding eight years, has been

- 1 convicted of, or released from confinement for:
- 2 (1) Any offense set forth in K.S.A. 21-3502, 21-3503, 21-3504, 21-
3 3505, 21-3506, 21-3507, 21-3508, 21-3510, 21-3511, 21-3512, 21-3513,
4 21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3522 or 21-3523, and
5 amendments thereto;
- 6 (2) any offense set forth in K.S.A. 21-4301, 21-4301a, 21-4301b or
7 21-4301c, and amendments thereto;
- 8 (3) any offense set forth in K.S.A. 65-4101 et seq., and amendments
9 thereto;
- 10 (4) any offense set forth in K.S.A. 79-3228, and amendments thereto,
11 or any other provision of law which prescribes criminal conduct with
12 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 sub-
16 stantially the same as an offense in paragraphs (1) through (5).
- 17 (v) “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 the
20 activities described in paragraph (1).
- 21 (w) “Substantial” means at least 30% of the items so modified.
- 22 (x) “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 business
27 within 1,000 feet of any preexisting accredited public ~~and~~ or private el-
28 ementary ~~and~~ or secondary school, house of worship, state-licensed day
29 care facility, public library, public park, residence or other sexually ori-
30 ented business. For purposes of this subsection, measurements shall be
31 made in a straight line, without regard to intervening structures or objects,
32 from the closest portion of the parcel containing the sexually oriented
33 business to the closest portion of the parcel containing the preexisting
34 elementary or secondary school, house of worship, state-licensed day care
35 facility, public library, public park, residence or other sexually oriented
36 business. This subsection shall not apply to any sexually oriented business
37 lawfully established prior to the effective date of this act.
- 38 (b) No person shall establish a sexually oriented business if a person
39 with an influential interest in the sexually oriented business has been
40 convicted of a specified criminal activity.
- 41 New Sec. 5. (a) No person shall knowingly or intentionally, in a sex-
42 ually oriented business, appear in a state of nudity.
- 43 (b) No employee shall knowingly or intentionally, in a sexually ori-

1 ented business, appear in a semi-nude condition unless the employee,
2 while semi-nude, shall be and remain on a fixed stage at least six feet
3 from all patrons and at least 18 inches from the floor in a room of at least
4 600 square feet.

5 (c) No employee shall knowingly or intentionally, in a sexually ori-
6 ented business, while semi-nude, touch a patron or the clothing of a
7 patron.

8 New Sec. 6. (a) A sexually oriented business which exhibits on the
9 premises, through any mechanical or electronic image-producing device,
10 a film, video cassette, digital video disk or other video reproduction char-
11 acterized by an emphasis on the display of specified sexual activities or
12 specified anatomical areas shall comply with the following requirements:

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

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

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

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

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

41 New Sec. 8. (a) No operator shall allow or permit a sexually oriented
42 business to be or remain open between the hours of 12:00 midnight and
43 6:00 A.M. on any day.

1 (b) No person shall knowingly or intentionally sell, use or consume
2 alcoholic beverages on the premises of a sexually oriented business.

3 (c) No person shall knowingly allow a person under the age of 18
4 years on the premises of a sexually oriented business.

5 New Sec. 9. For the purposes of sections 1 through 11, and amend-
6 ments thereto, it shall be a defense to liability for an officer, director,
7 general partner or a person who managed, supervised or controlled the
8 operation of the sexually oriented business: (a) That the act which forms
9 the basis for the violation was committed by an employee and that such
10 officer, director, general partner or a person who managed, supervised
11 or controlled the operation of the sexually oriented business did not know-
12 ingly or recklessly allow such act by the employee; or (b) to whom liability
13 is imputed was powerless to prevent the act of an employee which act
14 forms the basis for the violation.

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

20 New Sec. 11. If any provision of sections 1 through 11, and amend-
21 ments thereto, or the application thereof to any persons or circumstances
22 is held to be invalid, such invalidity shall not affect other provisions or
23 application of sections 1 through 11, and amendments thereto, and to
24 this end the provisions of sections 1 through 11, and amendments thereto,
25 are declared to be severable.

26 Sec. 12. K.S.A. 22-3901 is hereby amended to read as follows: 22-
27 3901. The following unlawful activities and the use of real or personal
28 property in maintaining and carrying on such activities are hereby de-
29 clared to be common nuisances:

- 30 (a) Commercial gambling;
- 31 (b) dealing in gambling devices;
- 32 (c) possession of gambling devices;
- 33 (d) promoting obscenity;
- 34 (e) promoting prostitution;
- 35 (f) habitually promoting prostitution;
- 36 (g) violations of any law regulating controlled substances;
- 37 (h) habitual violations of any law regulating the sale or exchange of
38 alcoholic liquor or cereal malt beverages, by any person not licensed pur-
39 suant to chapter 41 of the Kansas Statutes Annotated;
- 40 (i) habitual violations of any law regulating the sale or exchange of
41 cigarettes or tobacco products, by any person not licensed pursuant to
42 article 33 of chapter 79 of the Kansas Statutes Annotated;
- 43 (j) any felony committed for the benefit of, at the direction of, or in

1 association with any criminal street gang, with the specific intent to pro-
2 mote, further or assist in any criminal conduct by gang members. As used
3 in this subsection, “criminal street gang” means any organization, asso-
4 ciation or group, whether formal or informal:

- 5 (1) Consisting of three or more persons;
6 (2) having as one of its primary activities the commission of one or
7 more person felonies, person misdemeanors, felony violations of the uni-
8 form controlled substances act, K.S.A. 65-4101 et seq., and amendments
9 thereto, or the comparable juvenile offenses, which if committed by an
10 adult would constitute the commission of such felonies or misdemeanors;
11 (3) which has a common name or common identifying sign or symbol;
12 and
13 (4) 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, fel-
16 ony violations of the uniform controlled substances act, K.S.A. 65-4101
17 et seq., and amendments thereto, or the comparable juvenile offenses,
18 which if committed by an adult would constitute the commission of such
19 felonies or misdemeanors, or any substantially similar offense from an-
20 other jurisdiction; ~~or~~
21 (k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials
22 in violation of K.S.A. ~~2007~~ 2008 Supp. 31-170, and amendments thereto;
23 or
24 (l) *habitual violations of any law regulating sexually oriented busi-*
25 *nesses, including violations of sections 4 through 11, and amendments*
26 *thereto.*

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

33 Sec. 13. K.S.A. 22-3901 is hereby repealed.

34 Sec. 14. This act shall take effect and be in force from and after its
35 publication in the statute book.