

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Steven Brunk at 1:30 p.m. on February 15, 2011, in Room 346-S of the Capitol.

All members were present except:

Representative Rocky Fund – Excused
 Representative Mitch Holmes – Excused
 Representative Mike Kiegerl - Excused
 Representative Charlotte O'Hara – Excused
 Representative Mike Peterson - Excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
 Doug Taylor, Office of the Revisor of Statutes
 Julian Efird, Kansas Legislative Research Department
 Dennis Hodgins, Kansas Legislative Research Department
 Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Clancy Holeman, Riley County Counselor	
Monty Wedel, Riley County Planning & Development	
Laura Scott	
Alaina Lamphear	
Joseph Suber	
Philip Bradley, Equal Entertainment Group	
Michael W. Merriam	Written Only
Cecil & Teresa Kingsley	Written Only
Charley Upton	Written Only
Kevin O'Malley	Written Only
Al Hack	Written Only
Jan Sheridan	Written Only
Lance E. Malmstrom	Written Only
Pastor Donnie Miller	Written Only
Michael Scribner	Written Only
Donna Follick	Written Only
Larry W. Meeks	Written Only
Lindsay M. Ewing	Written Only
John Samples	Written Only
Corey Brown	Written Only

Others attending: See attached list.

The Chairman called for bill introductions. Representative Patton introduced a bill concerning gambling and the Expanded Lottery Act. It was received without objection.

The Chairman opened the hearing on **HB 2107 Community defense act, sexually oriented business regulations**

Clancy Holeman, Riley County Counselor, testified as an opponent of **HB 2107 (Attachment 1)**. Riley County has strict zoning regulations on the subject of sexually oriented businesses and as a result Riley County does not have even one sexually oriented business. While this bill would be good for counties without such regulations it is not needed in Riley County. He suggested that an opt out exception be allowed for counties with strict regulation.

Representative Rubin asked who would make the decision whether or not a municipal ordinance or county resolution is stricter or not inconsistent with this bill? Clancy said he thought that a court would decide that.

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 15, 2011, in Room 346-S of the Capitol.

Representative Loganbill said that perhaps your fifth reason would be to kill the bill. Clancy said yes.

Representative Boman asked if he would be satisfied if this bill was worded such that this bill would not affect anything that was stricter than this bill. Clancy agreed that an amendment was need to state that.

Representative Brunk asked if we need to tweak the language. Could you give some language to staff?

Mike Heim said that we should rephrase or eliminate Section 12.

Representative Goico asked a question for staff. How would home rule affect this bill? Mike Heim said that the city is bound by what the uniform law is but it can supplement what the law provides. It can do something which is more strict that what the uniform law is.

Representative Brunk asked if Section 12 was changed so that you could have stricter enforcement, would that change your position on the bill. Clancy said it would move him closer to neutral.

Representative Grosserode asked if the stricter regulations that Riley County had applied to hours of business or the sale of alcohol. Clancy was not sure about the hours of service but said the alcohol regulations did apply.

Representative Patton asked how long they had the alcohol regulation. Clancy said it was since 2004.

Monty Wedel, Director, AICP, presented testimony as an opponent of **HB 2107** (Attachment 2). He said that he thought that the language "stricter than but not inconsistent with" meant that if the Riley County regulations were "just as" strict as the provisions of **HB 2107**, then the Riley Counties regulatory system is void.

Representative Patton asked when they passed their regulation and if they had any SOB's since that time. Monty said that they have had no applications since the regulations were passed.

Representative Knox said he was surprised that they suggested an opt-out because it would be a poison pill for the bill. Is Riley County not concerned with protecting rural areas? Mike Heim asked if we drop out the Section you are having trouble with would that enable you to be more strict, would that solve the problem? Monty asked if they could be just as strict and be in conformance? Mike Heim said if that Section was not in there then that language would not be there at all.

Representative Gatewood asked what costs were associated when they enacted their regulations in 2004? Monty said that the only costs was staff time and the lawyer they consulted for the language of the regulation.

Representative Carlson said that he certainly understood their viewpoint and perhaps there is something we can do to make it work out.

Laura Scott presented testimony as an opponent of **HB 2107** (Attachment 3). She stated that she opposed the bill because the adverse secondary effects of sexually oriented businesses does not exist.

Representative Knox asked if she had any opinions about the patrons of the clubs. Do you see positive affects from the gentlemen who are in these clubs, or do you see negative affects to their families? She said she saw both positive and negative affects.

Alaina Lamphear presented testimony as an opponent of **HB 2107** (Attachment 4). The loss of revenue and the cost to patrol the businesses of the adult oriented businesses was her concern.

Representative Knox said this was expendable income and if there were no adult oriented businesses where would that money be spent? She thought the businesses would be driven underground.

Representative Grosserode asked if she knew of any underground sexually oriented businesses. She did not know of any.

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 15, 2011, in Room 346-S of the Capitol.

Representative Wolfe Moore asked if their had been a demand for this legislation. Representative Brunk said this bill had been heard in previous years. You can judge the interest by the number of people that show up and the cameras here recording it for the news.

Joseph Suber presented testimony as an opponent of **HB 2107** (Attachment 5). He said that in a free society toleration is only suspended when a grave threat to public health or order is posed. The free state of economic arrangements allows more people to find the niche they are most comfortable and productive in.

Representative Brunk asked if there were more than just anecdotal evidence and there were case studies done with compelling reasons to restrict this kind of activity in a certain way, would that move you from an opponent to a neutral or proponent of this bill? Joseph said he would need a more recent study and one that applied to Kansas sexually oriented businesses.

Philip Bradley presented testimony as an opponent of **HB 2107** (Attachment 6). He said that local control was preferred to state or national regulation. He said that this bill was an attempt to seize control from the communities and overrule community actions. He was especially opposed to the banning of alcohol in new section 8b and hours of operation in 8a which would require changes to the interiors of the buildings.

Representative Seiwert asked what was the amount of people who attend one of these cabaret functions, are they business people that come into town for a convention? Philip said yes but the primary group is local people. The convention business is not large enough to support these businesses.

Representative Grosserode asked if he could disclose what the current regulations are for alcohol sales within the state of Kansas in reference to the hours in which it can be served in establishments. Philip said that it depended upon the type of license you have. If you have an on premise license you are required to be closed between the hours of 2:00 a.m. and 9:00 a.m.

Representative Boman said that people have come to us for protection for themselves and their children, do you agree that they have a right to a standard. Philip agreed that they do.

Representative Gregory asked if he would like his niece to be a dancer. Philip said absolutely not and the behavior she mentioned was reprehensible.

The following presented written only testimony as opponents of **HB 2107**:

Michael W. Merriam (Attachment 7),
Cecil and Teresa Kingsley (Attachment 8),
Charlie Upton (Attachment 9),
Kevin O'Malley (Attachment 10),
Al Hack (Attachment 11),
Jan Sheridan (Attachment 12),
Lance E. Malmstrom (Attachment 13),
Donnie Miller (Attachment 14),
Michael Scribner (Attachment 15),
Donna Follick (Attachment 16),
Larry W. Meeks (Attachment 17),
Lindsay M. Ewing (Attachment 18),
John Samples (Attachment 19)
and Corey Brown (Attachment 20).

The Chairman closed the hearing on **HB 2107**.

The next meeting is scheduled for February 16, 2011.

The meeting was adjourned at 2:45 p.m.

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

2.15.11

ROOM 346-S

NAME	REPRESENTING
James Eric Todd	Intern - Grosserode
Derek Martin	Intern - Slattery
Taylor Zimmerman	Intern - Wolfe-Moore
Ladini say Jayaratne	Intern - Rep. McCray-Miller
Brook Freeman	Equal Entertainment Group
Marcel Ewing	Equal Entertainment Group
Lindsay M. Ewing	Equal Entertainment Group
Joseph Suber	myself
Laura Scott, RN	Olathe, KS
Anna Lawrence, DBA	Olathe, KS
Alaina Lamphear	St. George, KS
Philip Bradley	EEA - KLBA
JED HENRIK	CS.
Shaun Moore	Lyndon, KS
Wally McLaughlin	Intern - Barber ^{Rep.}
Scott Paradise	HOC



COUNSELOR'S OFFICE

115 N. 4th Street, 3rd Floor
Manhattan, Kansas 66502
Phone: 785-565-6844
Fax: 785-565-6847
Email: adillon@rileycountyks.gov

February 14, 2011

The Honorable Steve Brunk, Chairman
House Committee on Federal and State Affairs
Capitol Building, Rm. 346-S
Topeka, KS 66612

Re: H.B. 2107

Dear Chairman Brunk and Members of the Committee:

On behalf of the Board of Riley County Commissioners, I would like to offer opposition to H.B. 2107 in its current form. I am the lawyer representing the Board. I am also its lobbyist.

H.B. 2107 may be of tremendous benefit, in its current form, for those counties and cities which do not already have in place a comprehensive regulatory system for sexually oriented businesses. However, for cities and counties such as my client, H.B. 2107 requires an amendment.

Several years ago, Riley County put in place zoning regulations on the subject of sexually oriented businesses. Those regulations were based upon public hearings which included an opportunity for input from the general public. Those regulations have served Riley County well ever since. The proof of how strict those regulations are is this: Riley County does not contain even one sexually oriented business.

My client believes the following amendment (or its equivalent) should be added to H.B. 2107:

"The provisions of this act shall not apply to any city or county which has enacted an ordinance or resolution regulating any sexually oriented business."

With this simple amendment, H.B. 2107 would be available to assist those local jurisdictions which have not yet enacted ordinances and resolutions controlling the zoning of sexually oriented businesses. At the same time, the time and effort expended by those local jurisdictions which have passed such regulations would be respected.

Thank you for allowing me to speak to you today in opposition to the current form of H.B. 2107.

Sincerely,

Clancy Holman
Riley County Counselor

House Fed & State Affairs

Date: 2.15.11

Attachment 1

cc: Board of Riley County Commissioners



PLANNING & DEVELOPMENT

Monty R. Wedel, Director, AICP
110 Courthouse Plaza
Manhattan, Kansas 66502
Phone: 785-537-6332
Fax: 785-537-6331
Email: mwedel@rileycountyks.gov

February 14, 2011

The Honorable Steve Brunk, Chairman
House Committee on Federal and State Affairs
Capitol Building, Rm. 346-S
Topeka, KS 66612

Re: H.B. 2107

Dear Chairman Brunk and Members of the Committee:

On behalf of the Board of Riley County Commissioners, I would like to offer my opposition to the current form of H.B. 2107. I am the Riley County Director of Planning and Development.

I was in charge of the project which resulted in adoption of Riley County's current zoning regulations regarding sexually oriented businesses. A good deal of Riley County's staff time and effort, along with the work of our planning boards and the Board of County Commissioners was expended upon development of that existing regulatory scheme.

H.B. 2107 represents, in substance, state pre-emption of a subject which is most properly viewed as a local zoning matter. In my opinion it is local communities who are best suited to regulate this type of business activity. I believe it is a mistake to rely upon a "one size fits all" state solution to the regulation of sexually oriented businesses. H.B. 2107 only allows Riley County's existing regulatory system to remain in place if it is "stricter than but not inconsistent with" H.B. 2107. I believe that language means even if the existing Riley County regulations are "just as" strict as the provisions of H.B. 2107, Riley County's regulatory system is void. Given the language of H.B. 2107, Riley County's existing zoning regulations on sexually oriented businesses will remain valid only if they are "more strict" than H.B. 2107.

If H.B. 2107 must be passed, I ask that you add the following provision which will safeguard the work of local jurisdictions which have already enacted zoning regulations which are satisfactory to their respective communities: *"The provisions of this act shall not apply to any city or county which has enacted an ordinance or resolution regulating any sexually oriented business."*

Thank you for allowing me to speak to you today in opposition to the current form of H.B. 2107.

Sincerely,

A handwritten signature in black ink, reading "Monty R. Wedel". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Monty Wedel, Director, AICP
Planning and Development

cc: Board of Riley County Commissioners

House Fed & State Affairs

Date: 2.15.11

Attachment 2

Laura Scott 14321 W. 116th Terr. Apt 1910 Olathe, KS 66062 (913) 575-6347

IN OPPOSITION OF HB 2107. THE COMMUNITY DEFENSE ACT

Before the Committee on Federal and State Affairs

February 14, 2011

My name is Laura Scott and I am a resident of Olathe, KS. I oppose House Bill No. 2107. I have personal experience in several areas that I believe are pertinent to this Bill. I am a resident, voter, tax payer. Kansas registered nurse and work in clinical research, and have rarely been to, but have subsequently enjoyed, adult oriented businesses in Kansas. I have never experienced or witnessed any of the adverse secondary effects mentioned in the Bill, including, but not limited to, personal property crimes, prostitution, illicit drug use and drug trafficking, or sexual assault while in or around a Adult oriented business in Kansas.

I believe that if this Bill is passed it will have a negative impact on the state of Kansas and its residents. Adult oriented businesses support Kansas residents by providing much needed employment when the unemployment rate in Kansas, increased from December 2009 to December 2010, according to the Kansas Department of Labor. Adult oriented businesses also support the state as a whole by the revenue they generate in taxable dollars. New Section 8. (c) of the Bill would make it illegal to sell, use, or consume alcoholic beverage while on the premises of an adult oriented business. Kansas will lose tax revenue from the sale of alcoholic beverages at adult oriented businesses. New Section 8. (a) would force Adult oriented businesses to be closed from midnight to 6:00 am. This feels like the state of Kansas is placing a curfew on businesses and the adults who choose to either work there or spend time there. I don't feel that is something for the state to decide. Forcing a business to close earlier than they would choose to reduces that business's revenue, and subsequently, their employees' revenue. This seems like the last thing business owners and Kansas workers need with the economy struggling the way that it is.

As for personal property crimes, I have done some research on areas that do and do not have businesses that have nudity or a state of nudity. There is an adult oriented business in Basehor, Kansas called Whispers. I have personally never been to Whispers, but my cousin and her family live in Basehor. The property crime rate in Basehor was 9.1/1,000 in 2009 as reported by Basehor PD according to the Kansas Bureau of Investigation. The property crime rate in Parsons, KS, a city with no adult oriented businesses that I could find, was 82.9/1000 as reported by Parsons PD to the Kansas Bureau of Investigation. That's more than nine times higher. I haven't been able to find anything more than hearsay or opinion to link adult oriented businesses to property crimes.

To address the potential negative impact of adult oriented businesses on Kansas communities as it pertains to illicit drug use and drug trafficking Montgomery County had a total of 16 seizures in 2009 related to Methamphetamine. Montgomery County does not have a business with nudity or a state of nudity that I was able to find. Shawnee County had no seizures in 2009 and has several businesses that do have nudity or states of nudity. Clearly, the presence of such businesses was not a factor in illicit drug use or drug trafficking in these cases.

I want Kansas to be as safe as possible. I'm proud to call Kansas my home and I do feel safe here. I feel as safe at adult oriented businesses as I do at any other business in Kansas. I feel local control of such businesses is working and ensures my safety. I do not feel that the community defense act addresses any problems we have in the state of Kansas and it terrifies me to think of the negative impact it would have on Kansas businesses, workers, and state revenue. I ask that you look at the facts as they pertain to Kansas, not some other state, because we aren't them, and we shouldn't be assumed to make their mistakes. I ask that you have more faith in your state's businesses, employees, and residents to be citizens that would make you proud, even though we don't all enjoy the same things. I ask you to vote against House Bill 2107 because it attempts to fix a problem I don't believe we even have.

House Fed & State Affairs

Date: 2.15.11

3

Alaina Lamphear
5150 Rockenham Rd.
St. George, KS 66535

Dear Rep. Carlson,

I am writing to urge you not to support HB 2107 "The Community Defense Act" which will impose unjustly strong regulations upon "Adult Oriented Businesses." With these regulations, there is potential for millions of dollars of tax revenue to be lost not only from the businesses themselves, but from supplementary taxes including liquor from places that are not generating problems or harming neighborhoods.

In addition to holding a full-time job in the state of Kansas, I am an active senior at Kansas State University, involved in many feminist organizations, student judicial board, and many other activities. We are constantly left to wonder with the massive budget cuts taking place at the state level, where will the funding come from. As you are well aware, there have also been talks of salary cuts as well which has potential to directly hinder my education as taking a pay cut will directly affect morale. As a citizen of the State of Kansas, and one who will be affected directly by these cuts, I am curious as to how many additional salaries will need to be cut in direct correlation to the loss of revenue generated by "adult oriented businesses" and their subsequent liquor sales. I tried to find the fiscal note and information from this bill, including the expected loss of revenue from these businesses but it was nowhere to be found for the public to find on the Kansas Legislative website. I'd suspect it would be upwards in the millions.

In addition, one must look at the additional local, county and state police force cost to patrol these "adult oriented businesses." As a student at Kansas State, I have often gone into Aggieville on a Saturday night with no expectation to see acts of an "adult nature" and yet experience dancing and interaction though legal still quite similar to that, in venues with far less law enforcement presence/supervision or security from the establishment than adult clubs. Yet if I was to frequent an "adult oriented business" it's pretty obvious what this business is and what I could expect. My question is until we have enough resources to take care of the areas of the communities with proven current criminal activities that are occurring directly in front of our eyes in non- "adult oriented businesses" of all types, why take away a place that is a) legal and compliant with state statutes, rules and regulations, b) providing an expectation of what one would find inside the doors c) providing revenue to the state and jobs to Kansans and d) provides a controlled locally regulated venue for adult entertainment off the public streets or computers where a child or some unwilling patron might actually come into contact with this.

Again, sir, thank you for your time, and your support in keeping HB 2107 from taking any further, much needed revenue from the state.

Sincerely,

Alaina Lamphear

House Fed & State Affairs

Date: 2.15.11

Attachment 4

February 14, 2011
Kansas House of Representatives
Federal & State Affairs Committee

HB 2107

Mr. Chairman Brunk and Members of the Committee,

In a free society toleration is only suspended when a grave threat to public health or order is posed. The burden of proof of harm should be on those who wish to limit the free and consensual economic activities of their fellows. Hear-say and anecdotal condemnations should carry no weight. We cannot expect to share and approve of the tastes of all our fellow citizens. We can expect that toleration of our own peculiar tastes will be given in return for our own similarly forgiving attitude.

If we instead begin to legislate against and outlaw commercially viable activity only because it is distasteful to many (or a vocal minority) of our fellows, then we open ourselves to a continual winnowing of commercial activity down to those grey and austere forms that are only approved of by the state, such as continued in Soviet Russia.

The price-tag of one new mother unnecessarily on the welfare rolls is too high a price – both in money and in the degraded morale of a once-productive citizen.

There is no question that the current, freer state of economic arrangements allows more people to find the niche they are most comfortable and productive in than the proposed legislated state of affairs. As was recognized in our constitution and as we have seen time and again, government intervention in the economic lives of the citizenry has far-reaching unintended consequences. Those that feel the job of government is to protect freedom – not to impinge upon it – are also defending the most economically viable position. Freer arrangements bring to bear the knowledge of more individuals and their appraisals of value.

As Missouri has fallen to this type of legislation, Kansas has benefited. We are an example of how local control has worked. Freedom-loving people flee excessive legislation. Let our laboratory of democracy be an experiment in GREATER not lesser freedom.

The idea that women who work as dancers are somehow victims can be dispelled with an honest conversation them. Such women are empowered, emboldened and financially aware where they otherwise would have been beholden to others or the state. The entertainment occupation may have been the first opportunity they have had to save earned income with an eye towards change and a responsible advanced living. Banning profitable and harmless employment in the presence of alcohol will ensure that only the desperate few who are willing to work for very little will continue.

Joseph Suber Retail Business Owner (11 years), Olathe, KS

House Fed & State Affairs

Date: 2.15.11

Attachment

5

EEG

*Equal
Entertainment
Group*

Mr. Chairman, and Members of the Committee,

I am Philip Bradley representing the Equal Entertainment Group. I also have the permission of the Kansas Licensed Beverage Assn. and they support the defeat of HB 2107 Thank you for the opportunity to speak today.

We **oppose HB 2107** and ask you to not advance or support this act. This measure addresses many issues that appear simple on the surface but are very complex attempting to further expand state government regulations where local government already has taken action. While one may or may not agree with current law and the courts interpretations of that law, those elements together have attempted to find a balance; the very important and critical balance. One between the individual rights, personal responsibilities and the individual freedoms citizens are guaranteed and the duties of the government to protect its citizens. Our country is founded on the principles and beliefs that although certain practices and beliefs may not be shared by all and even be disapproved by some, they are worthy of protecting in the greater cause of our rights and freedoms. And founded in the belief that local control is preferred to state or national regulation. Seemingly helpful actions will have dangerous unintentional consequences.

These subjects are difficult to discuss objectively, and especially difficult to discuss in a forum such as this. They may be embarrassing to some. They need a thoughtful considered, deliberation before altering the status quo. This measure covers several areas including; retail establishments (aka adult book stores and/or adult video arcades) and secondly restaurants, clubs and bars that also are entertainment venues. These should be split into separate measures and considered individually. They operate significantly different with differing licensing requirements or none at all. ***We first ask that this measure covering two different subjects be divided into two separate bills and let each be debated and stand on their own merits.***

HB 2107 proposes serious issues and needs serious consideration. My testimony won't be covering the legal arguments that others have already addressed for the many years that the legislature has considered and wisely chosen not to enact this extreme measure. My members are primarily concerned with the businesses defined in HB 2107 in page 2 Line 36-39, "(c) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club or other commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude" and we generally limit ourselves to those places serving/selling beverage alcohol. Those should be in a separate bill.

The opening paragraphs allege that this is the "community defense act", though what it seeks to do is **seize the control from** the communities and **overrule** community actions. The justification is contentions of "secondary effects" that are supported by studies of out of state urban areas and give no evidence that any of these claimed effects have or are occurring in Kansas. This bill has been offered for years and yet there is no Kansas substantiated evidence. Recent events are just proving that local control is working and is best.

Philip Bradley

*1372 N 1000 Rd.
Lawrence, KS 66046*

*785.766.7492
pbb@sunflower.com*

February 14, 2011
Testimony
on HB 2107, House
Federal & State
Affairs

House Fed & State Affairs
Date: **2.15.11**

Attachment **6**

We urge the defeat of this measure as a whole. We at the very least, object to the banning of alcohol in new section 8b and hours of operation in 8a, requiring the changing of floor plans, interior rebuilds, installation of cameras/spying devices, hiring of additional personnel, and new additional operation procedures. We object that all of these new requirements be completed within 180 days. We also feel that the word "habitual", is open to subjective and varied interpretations.

We urge you to not advance this bill. However if the committee wishes to pursue this wide reaching and comprehensive act, we ask that this bill be separated into two stand alone measures and suggest that a sub-committee be appointed and we offer to work with such a group.

Thank you for your time.

Philip B. Bradley

The difficulty in life is the choice

. The Bending of the Bough, Act V

Negative Economic and Employment Impact of HB 2107

With only 10 of 24+ establishments reporting

(including info from Wichita, Topeka, Lawrence, Emporia, Johnson County and Douglas County)

Taxes	drink	enforcement	gallorage	sales	other	property	Workers	KS Income tax
	303,951.26	73,443.09	10,500.00	89,158.96	562.51	59,622.00	394	4500
	10 reports	10 reports	computed	9 rpts	1 rpts	6 rpts	9 rpts	1 rpts

Total of taxes reported so far (10 of 25+)

\$541,737.82

Workers so far.....

394

Based on 40% response then total Loss would be ...

\$1,354,344.55

Total Workers Could be

900 to 1k +

***Based upon 2009 reporting dollars and has NOT been adjusted for increased pricing and taxation

6-3

6-3

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

FEBRUARY 14, 2011

STATEMENT OF MICHAEL W. MERRIAM

IN OPPOSITION TO HB 2107

Mr. Chairman and Members of the Committee:

I practice law in Topeka and represent three gentlemen=s clubs in the vicinity. I also have been representing the media in First Amendment issues for about 35 years. I teach First Amendment law at Washburn University. With that experience, I would like to comment in opposition to HB 2107, which, as the saying goes, is a solution in search of a problem. This is not a legal brief, so I dispense with case citations and state the law in general terms.

Numerous cases have recognized that non-verbal expression, which includes exotic dancing, is a protected activity under the First Amendment at least to some extent. Under the Forum Analysis of the First Amendment, the power of government to regulate such activity on private property is much curtailed. Well-established rules for such regulation are known as Time, Place and Manner restrictions upon speech. These four rules must be followed for a government to restrict protected First Amendment activity:

1. The restriction must be justified by a substantial government interest;
2. The restriction must be content-neutral;
3. The restriction must not constitute a complete ban on the activity;
4. The restriction must be narrowly tailored, i.e., no broader than necessary to achieve the substantial government interest.

As for gentlemen=s clubs, these constitutional rules are ignored by HB 2107 in a number of respects. The principal issues are threefold: 1) 2107 prohibits nudity, and semi-nudity under certain conditions; 2) the clubs could not remain open past midnight; 3) the clubs could not serve alcohol.

I will not argue the rather over-elaborate statement of legislative intent, which appears designed to forestall almost certain litigation (which has been the norm in every other state attempting this sort of legislation), although I do challenge the bill supporters to prove any such negative secondary effects are actually occurring in Kansas.

House Fed & State Affairs

Date: 2.15.11

Attachment

7

These restriction are certainly not content-neutral. Indeed, it is precisely because of the content of the protected activity that these clubs are singled out for such restrictions.

These restrictions would constitute a complete ban upon the clubs= protected activities. It is a fact of business - well known to the crafters of 2107 - that gentlemen=s clubs offer entertainment that involves nudity or semi-nudity, alcohol, and after midnight hours, up to their licensed closing hour of 2 a.m.. The loss of any one of these factors, let alone all three, will spell the closing of such businesses. No new clubs would or could open. There would result a complete ban on the protected activity by putting the clubs out of business entirely.

Finally, HB 2107 addresses an imagined problem with a death blow to the industry and First Amendment protected activity. How can one explain, for example, how closing a gentlemen=s club at midnight, but allowing all others that serve alcohol to remain open, narrowly serves the purpose of containing Asecondary effects@? Likewise, how can one explain prohibiting serving alcohol at all at a gentlemen=s club, but allowing it in every other licensed establishment?

I leave it to the industry to explain the extensive loss of sales, liquor, income and property taxes to the State, increased unemployment and other harmful direct effects of this proposal. I do know that some communities, such as Emporia, manage perceived secondary effects perfectly well locally, as could every community within the State. I fear that this bill invites not only First Amendment litigation, but lawsuits on Equal Protection grounds as well. With no evidence of ill effects in Kansas, adoption of this legislation is ill-advised.

Thank you for your attention.

Respectfully submitted,

Michael W. Merriam

cc: Mr. John Samples
Mr. Phil Bradley

RE: "Community Defense Act" HB 2107.

We've recently heard about the plight of Wes concerning his business, the Flamingo Club. We want to write this brief letter in hopes that you can pass it along to lawmakers who will appreciate and actually **consider the views of Lawrence citizens who feel our community would NOT be better off without Wes or his business and who, in fact, deeply appreciate his efforts to make our community a better place to live.**

It is our opinion that Wes' business does not harm our community and, without his business income, our community would, in fact, be damaged. My wife and I have been and are members of fund raising committees and/or charities in Lawrence. Every time we have needed and asked for Wes' support, he has never declined and always delivered. He is one of the most gracious and giving persons in our community when it comes to helping others. We've lived here since 1987 and never heard of a case where Wes' business caused harm to our community.

In addition to contributing money and his time, Wes also offers his place of business when fundraising groups need a place to meet. Many of our city leaders have taken advantage of the opportunities Wes provides when it comes to a meeting place for charitable endeavors. He provides his building and pays the utilities bills necessary to support the meetings/events.

He is always ready to donate funds to help charitable organizations. One particular story comes to mind concerning the Crown Casting Club (a kids club that teaches kids to fish). Early in the organization of the club, the club was in need of life jackets. Wes heard about that and said to send him the bill. He paid for all of the life jackets (50 nice full vest jackets of various sizes) without ever expecting anything in return and said "if I can do more, please let me know". He expressed the need to give single parent families an outlet to enjoy the outdoors.

It is our opinion that the law makers should not try to legislate morals. This would especially be the case when they really don't know the business and can't site any harm done by it. Quotes from large, inner city studies hardly seem appropriate. Our community accepts and, in fact, appreciates Wes and the way he runs his business. **The "Community Defense Act" seems to me to be misnamed. Maybe a better name would be "Community Business Destruction Act".** We don't believe anyone was elected to pass this act and we oppose the legislative committee and / or legislature continuing to advance this bill that would directly harm Wes and his place of business.

Thank you for your consideration,

Cecil and Teresa Kingsley

2020 Palmer Dr.

Lawrence, KS 66049

House Fed & State Affairs

Date: 2.15.11

Attachment

8

HB 2107

February 9, 2011

Dear Kansas State Representative:

This letter is to address H.B. 2144 (The Kansas Community Defense Act) and its potential impact on business owner and community advocate, Wes Kabler. Wes has been running The Flamingo Club in Lawrence, KS since 1969. His contributions to the Lawrence Community have been vast. Considering his financial contributions alone undercuts the true commitment of time and resources he has given to the Lawrence community. His involvement in this community has made for better lives to those in the most need. Wes has assisted charitable causes in our community like The Boys and Girls Club, Big Brothers/Big Sisters, Lawrence Humane Society, March of Dimes, Willow Domestic Violence Center just to name a few.

I urge you to consider the impact this bill will have on the livelihood of Wes and his far-reaching positive impact on the community of Lawrence.

I also urge you to oppose HB 2107.

Sincerely,

Charlie Upton

1919 N. 600 Road

Baldwin City, KS 66006

House Fed & State Affairs

Date: 2.15.11

Attachment 9

HB 2107

February 8 2011

The Honorable Steve Brunk

Chairman Committee of Federal & State Affairs

Kansas State Representatives

I'm writing to you today on HB2107. I'm the owner of O'Malley Beverage of Kansas, Inc. the local Anheuser-Busch distributor in Lawrence my territory covers six counties; Anderson, Atchison, Douglas, Franklin, Jefferson and Leavenworth. My company employee 30 people and provides generous wages and an excellent benefits package. The industry this bill is targeting are customers of mine and with the current economic condition we are faced with today, I need all the customers I can get.

Wes Kabler who owns the Flamingo Club in Lawrence is a personal friend of mine, not just a customer. I have served on committees with Wes he is generous with his time, talent and treasure. Wes is a good corporate citizen of my community.

I believe there are far bigger issues facing our State. You can't legislate morality.

Thank You for your time and service to the great State of Kansas.

Cheers!

Kevin O'Malley

House Fed & State Affairs

Date: 2.15.11

Attachment 10

House Federal and State Affairs Committee

HB 2107

I am opposed to HB 2107 for the following reasons:

- 1- It is anti-business legislation. At this point in time we cannot do harm to any business in our state and the outcome of this bill would cause businesses to close and people to become unemployed.
- 2- It is a clear attempt to legislate morality. The legislature has a very full plate of much higher priority decisions to work on than this one. Please re-focus your efforts to more appropriate tasks.
- 3- I have a fear that this legislation might actually lead to more precarious situations for people in the industry- especially the women who believe this is their career and may try to continue it in more private, but much riskier, environments. At least there is staff and security to keep people safe in a club setting.
- 4- In my town we have a proprietor of a Gentlemen's Club who is and has been active as a fundraiser for charities in our community for the last 20 years. In fact he founded one in particular that has raised over \$500,000 for children's charities in our community. He is not the villain that this legislation would make him out to be. Quite the opposite, he is a community leader who would suffer greatly if this legislation becomes law.

Please do the sensible thing and kill this bill, as the unintended consequences will surely overpower whatever good you believe it will do.

Thank you for listening.

Al Hack
1968 Carmel Dr.
Lawrence, KS 66047

House Fed & State Affairs

Date: 2.15.11

Attachment 11

Jan Sheridan 4116 Trail Rd Lawrence, Ks 66049 jansheridantfac@hotmail.com 785-393-3133
 Re: Wes Kabler of The Flamingo Club

PRO'S	CON'S
<ul style="list-style-type: none"> Wes is man that always gives back to the community whether it be a homeless person who needs a meal to freely support St. Patrick's Parade to everyday needs that Lawrence comes across usually needing some backing 	<p>HB 2107 would penalize the man for running a state regulated establishment an abiding by the laws.</p>
<ul style="list-style-type: none"> Wes has had an establishment for years with very little chaos unlike other bars and restaurants where police are dispatched frequently. So if you're going to change the hours of operation & take all alcohol out of the picture you better be prepared to do the same to ALL other establishments. 	<p>Take all away as is proposed in HB 2107 and ANY business would fail.</p>
<ul style="list-style-type: none"> Location: Currently on the out skirts of town and out of the way so it's not meant to be in anyone's face that would rather not patronize the facility. After 20+years I haven't seen any indication that it has had any bad effects and even has had a positive effect and been a good neighbor to the nearby residents. 	<p>According to HB2107 it supposedly it encourages crime and brings down the community. This is not true.</p> <p>How long has the Flamingo been there? Decades and I have neither seen nor heard of any complaints.</p> <p>Come On!</p>
<ul style="list-style-type: none"> Supports a lot of women who are trying to raise a family or get through college. 	<p>It may not be your choice line of work but it's honest, legal and it is paying the bills and supporting their kids</p>
<ul style="list-style-type: none"> Employs other people who count on these good jobs to live. I.E.: the cooks, bartenders, waitresses, managers etc. 	<p>My Question to you is ; How would you like your legal job yanked from under your feet.</p>
<ul style="list-style-type: none"> Wes should not be lumped into a bill with porn bookstores, as they are two very different things. At the Flamingo there is structure and rules to follow and constant enforcement; at a bookstore who don't require a license, it's totally without regular law enforcement visits. 	<p>Don't run these two matters together. You're acting like they're interchangeable and their totally different issues.</p>
<ul style="list-style-type: none"> I often wonder how much Wes's generosity has positively affected NFP's, youth groups, fundraisers, charity events and KU. I know a lot! 	<p>Please do not try to run him out when he has a legit business and plays by the rules especially based of out of state "studies" and non Kansas examples!</p>
<ul style="list-style-type: none"> Wes has a wonderful family. They give their time to help raise money for the community and kids as well. You CANNOT say enough good things about Wes and he does it with a closed mouth, shying away from gratitude. The man oozes with character, friendship, integrity and good spirit. 	<p>Whoever is behind this constant battle needs to give it up. We need more good people in this world just like Wes!!!</p> <p>Thank you for your time!</p>

House Fed & State Affairs

Date: 2.15.11

Attachment

12

HB 2107

February 8 2011

House Committee of Federal & State Affairs

Dear Kansas Representatives:

Kansas citizens who do not want a lap dance, sushi or tattoos have the freedom to not patronize businesses that offer these. Kansans who do not wish to own guns have the freedom to not own guns. The above bill would restrict freedoms, destroy jobs and lower tax revenues--reasons enough that it should not pass.

Driving in Topeka past the Flexel plant, Frito Lay, the Waste Management landfill all disperse unpleasant odors that I find, as well as my out of state visitors, extremely offensive. Driving on Highway 75 past private farms with cattle pens does the same. Please shut down these nuisance businesses as well as while you are cleaning up Kansas. We do not need these jobs or revenues.

Please build more state owned casinos to hire the above displaced workers where I can be entertained by in a "proper and moral" environment endorsed and embraced by our beloved lawmakers.

This is a bad bill that helps no Kansans and harms many. Let it die. Don't look for solutions to problems that do not exist.

Respectfully,

Lance E. Malmstrom, D. C.

House Fed & State Affairs

Date: 2.15.11

Attachment 13

Thought you would be interested in this letter from Pastor Donnie Miller of the Trinity Family Church of the Nazarene in Gardner, KS regarding one of KS Adult Clubs. Thank you Phil Bradley

April 21, 2010

To whom it may concern:

My name is Donnie Miller and I'm the pastor of Trinity Family Church of the Nazarene in Gardner, KS. Over the past few years, my wife and I have become friends with Guido and some of the other employees of Bonita Flats. It started in the summer of 2007, when my wife and some other ladies in our church sensed God leading them to find a way to share His love with the employees of the two gentlemen's clubs in Johnson County. The ladies began a ministry we now call "Love Wins."

The point of Love Wins is to share God's love with a group of people often looked down upon and treated harshly by the church and individual Christians. The ladies from our church wanted those in the clubs to know that Jesus doesn't condemn and judge the way many Christians do and that God loves them right where they're at. Once a month, they would put together gift bags and pass them out among the club's employees, trying to show God's love in a tangible way.

The first two times our ladies visited the clubs, there was a lot of anxiety and uncertainty on both sides. My wife wasn't sure what to expect from the clubs and vice-versa. The security staff of Bonita's were fearful that the ladies from our church were there to make trouble. Over time however, our opinions of each other changed. A security staff member eventually told me, "We kept waiting for you to condemn and judge us, like all the other Christians we know. But you never did. It seems you really believe what you talk about. I have become interested in this God of yours." My wife's attitude when going to the clubs began to change from fear and intimidation to expectation and warmth. While she certainly didn't get to know everyone at Bonita's, she did build a friendship with Guido, the club's owner.

My wife went to the club to love on the employees, but Guido and some employees began to love Erin and myself back. When a pregnancy attempt failed, Guido hugged my wife and offered encouragement. When we adopted a son a few months later, Bonita Flats graciously threw us a baby shower. Guido told us that they threw the shower as a thank you for sharing love in a way they'd never seen before. We walked away from that shower feeling very loved.

The best part of our relationship with the clubs however, has been our opportunities to serve together. Over the past three Christmases, both clubs have partnered with us to serve needy families. We have also partnered together for several service projects at My Father's House, a ministry for the rural poor in Paola, KS. Guido always makes sure there is a good group from Bonita's working on those serve days, usually larger than the group from my church. When we first started Love Wins, we hoped to have the chance to share Jesus' love with a group often looked down upon by the church. We have been completely overwhelmed by the opportunity to live out Jesus' compassion for the poor with our friends from Bonita's.

I share all of this to publicly affirm the good that has come out of our relationship with Bonita Flats and to affirm the good that exists in Guido and his employees. I am not publically endorsing the gentlemen's club industry nor taking a side on the legislative issues being discussed. Guido and I have had honest discussions about the fact that we have different views on morality and sexuality. Even with our obvious differences, I am grateful for the opportunity to discover hidden commonalities and work together for a common good.

Sincerely,

Pastor Donnie Miller
Trinity Family Church of the Nazarene
Gardner, KS

House Fed & State Affairs

Date: 2.15.11

Attachment

14

**House Committee of Federal & State Affairs
HB 2107**

**Mr. Michael Scribner
10610 w 89th Street
Overland Park, KS. 66214**

Dear Federal and State Affairs Committee,

I am a local resident and voter writing to ask you to vote against HB 2107, titled the "Community Defense Act," which is scheduled for a hearing on Monday, February 14th, 2011. I am a normal, taxpaying citizen, and an industrial designer by trade. I have no ties to any adult bar or restaurant, and in fact have never worked in any such establishment in my life. I rarely visit such establishments, perhaps a few times in my life. I'm simply appalled by the lack of perspective this avenue of legislation represents on the part of the Kansas government.

The simple fact is that you have much larger concerns right now than this. We are facing millions of dollars of budget shortfall and high unemployment. In times of such economic hardship, enacting legislation such as this will do nothing but kill much needed jobs and avenues of tax revenue from legitimate businesses. The bill under consideration is extremely unfair, and places restrictions on a specific type of business that the vast majority of similar businesses are not held to.

Further, the premise that the bill will "promote the health, safety, and general welfare of the citizens of Kansas" is nebulous and vague at best. There seems to be little research indicating any correlation between such businesses and notable increases in crime or criminal activities. A few of the "deleterious secondary effects" mentioned in the proposed legislation sound more like moral concerns of personal opinion, not actual crimes. Your job as government officials is not to legislate morality. Please remember that.

My personal experience with adult entertainment venues is somewhat limited, yet the few times I have been to such locales, I have felt safe, and the experiences provided in the venue were legal and entertaining. These are businesses like any other, providing a service to the community, entertainment to consenting adults, provided by consenting adults, and a stream of tax revenue to the state. A proponent of fiscal responsibility will vote against HB 2107.

Thank you for your time and consideration.

Michael Scribner

House Fed & State Affairs

Date: 2.15.11

Attachment 15

HB 2107
House Committee of Federal & State Affairs

February 8 2011

Dear Mr. Chairman & Representatives,

It has come to my attention that this new bill concerning the liquor laws at adult establishments is up for discussion again. I would like to express my thoughts to you. I am a small business owner and parent.

First, I do think that it is a good idea to only have people handling alcohol working at these establishments that are 21 years and older. I also agree that those patrons between the ages of 18 and 21 should not be allowed in, due to alcohol being served. However, pretty much everything else in this bill I think is unnecessary.

I would hope that the state has more important matters to address instead of worrying about how some of the gentlemen in the state of Kansas spend their evening. As long as everyone is following the legal ordinances adopted by local communities and all involved are paying taxes, then what is the big deal? The girls working in these establishments are mainly single mothers trying to support their kids, because of the lack of child support that they receive from the fathers. So, instead of going on state assisted programs, they are working and paying their taxes. Not to mention the jobs that will be lost from the ripple effect of closing these establishments. And the last time I checked the news, the State of Kansas doesn't need a higher unemployment rate or additional burdens place on an already staggering budget deficit.

If you pass this bill, then these women will be forced to either live off the state or turn to "other" activity that will result in a higher crime rate and unsafe working conditions.

The other question I have is, do these rules apply to the entertainment format of Burlesque? Burlesque offers married couples the entertainment of the old Vaudeville Days. I would appreciate a response to this question, because there are several Burlesque Troupes in Kansas who are raising money for mainstream charities at well known theaters.

As to the matter of how I would like for you to vote on this bill? Please vote against it.

Thank you for your time.

Sincerely,
Donna Follick
416 E Spruce St
Olathe, KS 66061

House Fed & State Affairs

Date: 2.15.11

Attachment 16

February, 2011

c/o The Honorable Steve Brunk, Chairman.

Mr. Chairman,

I would like to address the Bill HB 2107. My name is Larry W. Meeks, I am 63 years old, and I am a lifelong resident of Kansas. I have been self employed for the past 22 years, with the last 10 as owner of an "adult cabaret", as so called in this bill.

Sir I ask, Is it really the place of Government to decide if I stay in business or do not based on unfounded accusations and studies done on what, inner city crime in the big cities and other States? As I understand the studies this bill was presented on were not even done here in KANSAS. ? Isn't that why we have long standing laws and ordinances already established to govern how we are to properly operate these businesses? In allowing this bill to pass, I feel my rights as a citizen will most certainly have been abused. I have NEVER been fined, written up, issued a ticket, penalized, or taken to any court because of ANYTHING to do with my club. I have random UAs, with the immediate suspension of an entertainer should she test positive for drug abuse. I strictly enforce a "no customer relationship" outside my business. Again that has an immediate suspension as the consequence. I can guarantee you that a customer wanting afterhours company would be way more likely to find that at a regular bar or club than at my "adult cabaret".

This Sir is an established business (20+ years) it is not what this bill implies it to be. There is not one single residence within two city blocks of my club that is for sale or rent. This bill asserts that we "Drag the neighborhood down ". Totally unfounded. Any negative secondary effects of my club would be if this bill were to pass. Isn't Kansas embarrassingly in the red with loss of tax revenues? This would create more tax loss. Most of the entertainers are single parent mothers, with no formal education, and in today's economy looking at a pretty gloomy future for job prospects. What, do they go on welfare, become another burden on the State?

I believe this bill is based on someone's personal feelings rather than on thought out good business sense. Then it was combined with another bill with regulations on Adult Bookstores. WOW! Talk about not comparing apples with apples. They are two completely different and separate businesses.

I am respectfully asking for you Mr. Chairman and the committee to re think this Bill and understand the negative ramifications this could bring upon the state and just how many people would be put out of work at a time when the economy is already suffering.

Thank you for your time and any consideration deemed worthy of my thoughts. I am sorry it is so long. This is my life. And this bill will take that away from me and many others.

Sincerely,
Larry W. Meeks
Owner & operator
The Gentleman's Club
Great Bend, Kansas

House Fed & State Affairs

Date: 2.15.11

Attachment 17

RE: HB 2107

To Whom It May Concern:

2/10/2011

I am writing in regard to House Bill 2107. I have been a massage therapist for 7 years in Lawrence, KS. I have worked for large companies, small businesses, and for myself. I have an extensive client list including many people who work in the adult entertainment industry. If their industry were to come under the proposed legislation, it could potentially cripple my clients financially. I have already been alerted to the probable loss of those clients if this house bill were to go through. The industry this legislation is targeting includes very good clients of mine and with the economy as it is today, I need all the business I can get.

As an honest, hardworking person, I ask that this legislation not be passed. This bill will do sufficient damage to my income, which will in turn make it difficult for me to hold up to my financial obligations. I do not see any reason why this industry should be under such limitations. I believe there are far bigger issues facing our state than the restriction of the adult businesses.

I have not observed any "negative effects" and have seen that the local city and county laws are doing a good job of regulation. I fully oppose this legislation and ask that it be removed from committee.

Sincerely,

House Fed & State Affairs

Date: 2.15.11

Attachment 18

Lindsay M. Ewing

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
FEBRUARY 14, 2011
TESTIMONY OF JOHN SAMPLES REGARDING HB 2107
CLUB ORLEANS AND BABY DOLLS, TOPEKA, KS

Mr. Chairman and Member of the Committee:

1. \$900,000 payroll
2. 50 employees
3. 100 + dancers
4. \$200,000 + in liquor taxes
5. Number 1 and Number 2 clubs in Topeka
6. Clubs are safe and secure and they obey the laws
7. No study done in Kansas

Thank you for your attention.

Respectfully submitted,

John Samples

House Fed & State Affairs

Date: 2.15.11

Attachment 19

February 11, 2011

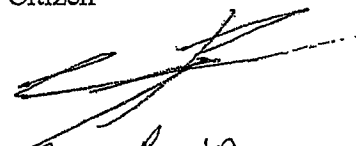
To Whom It May Concern:

The purpose of this letter is to better help inform the public concerning how today's gentlemen's clubs are operated. They are not the gentlemen's clubs of the past nor what you see in today's television world. These clubs employ more than 2,000 people locally. They serve reasonably priced drinks and good quality food for a low cover charge.

In Topeka alone the yearly revenue is more than \$1.3 Million with the bulk of that money being brought back into the community helping community retailers boost sales as well.

Thank you for time and consideration.

Sincerely,
Informed Citizen


Cary Brown
Topeka, KS.

House Fed & State Affairs

Date: 2.15.11

Attachment 20