

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 18, 2011, in Room 346-S of the Capitol.

All members were present except:

Representative Fund – Excused  
Representative Kiegerl – Excused  
Representative 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:

Others attending:

See attached list.

The Chairman called for the committee to work **HB 2218 Abortion regulation based on capacity of unborn child to feel pain.**

Representative Holmes made a motion to pass the bill out favorably, seconded by Representative Rubin.

Representative Brunk made a motion to add “or induced” wherever the word “perform” appears and the revisors technical amendment to change the numbering of sections, seconded by Representative Patton. The motion carried.

Representative Loganbill offered an amendment to add an exception for fetal anomaly. Representative Gatewood seconded the motion.

Representative Patton said that he opposed the amendment.

Representative Gregory said that she would also oppose the amendment.

Representative Rubin asked Representative Loganbill for a definition of anomaly. She mentioned the fetal anomalies that were mentioned in yesterdays testimony. Representative Rubin said the definition would be very important to your amendment and that he also opposed the amendment.

Representative Knox said that he would oppose the amendment on the basis that it is a human life and I would not think it is in the interest of the state to define a condition where we would take a human life.

Representative Gregory shared with the committee that she had two friends who were told that their child would be born with severe anomalies but there were no anomalies. So there are missed diagnosis to.

Representative Brunk said that he would oppose the amendment based on personal experience. We have a daughter who was borne with spina bifida. She would fall into this category of a fetus with an anomaly. The doctors told they that she would not have any kind of a normal life. Today she is 33 years old and has been married for a couple of years and is employed. Sometimes life is difficult, life is hard and things happen beyond our control that we wouldn't want to happen. But in my personal opinion the difficulties of life do not negate the fact life at its core is good.

Representative Goico asked if a fetus having an anomaly feels pain. The issue we are considering is fetal pain and an anomaly does not affect fetal pain so I also stand opposed to this amendment.

Representative Loganbill said that this was a very emotional issue and moved her amendment.

## CONTINUATION SHEET

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The motion failed. We are back on the bill.

Representative Patton made a motion that the bill be passed as amended. Representative Goico seconded the motion. The motion carried.

Representative Henderson requested to be recorded as a no vote.

The Chairman called for the committee to work **HB 2107 Community defense act, sexually oriented business regulations.**

Representative Knox made a motion to move the bill out favorably, Representative Ruben seconded.

The Chairman said that there was an amendment on New Section 12. The gentlemen from Riley County felt that Section 12 would keep them from doing something stronger than what this bill would call for.

Mike Heim provided copies of the amendment to the committee (Attachment 1). The amendment is on page 8, line 7 and it clarifies that a city or country can enact their own local ordinance or resolution concerning sexually oriented businesses as long as they are not in conflict with the state law. This means they could adopt something that was the same or more stringent. Basically the courts have established that if it is the same as, there is no conflict, and if it is more stringent, there is no conflict.

The Chairman said that the intent of this amendment is to allow cities and counties to pass ordinances or resolutions that are just as strict or stricter than this bill.

Representative Goico asked a question of the advisor. If you have home rule that came into affect after the Supreme Court decision, would this put us in a position that home rule could be applied again or is the statute open for any city to do whatever they want to? Mike clarified that constitutional home rule had an amendment adopted by the people of the State of Kansas back in 1960, effective July 1, 1961, that granted cities home rule power in Article 12, Section 5 of the Kansas Constitution. Counties got home rule by statute by this legislative body in 1974. The cities are able to act if the legislature has not done anything. In this case the legislature has not regulated adult businesses at the statewide level.

Representative Rubin said that this bill had a lot of different regulations. Mike said if this bill passes they will have to review their local ordinances to conform to state law.

The amendment carried.

Representative Rubin made a motion to amend on page 7, lines 23 to 25 of the bill, New Section 8 by deleting sub (c) in its entirety. Representative Grosserode seconded the motion.

Representative Rubin said that we are addressing several different kinds of businesses in this bill and this provision would affect some of them differently than the others and would drive them out of business or cause them to go underground. My purpose is to prevent that.

Representative Knox said that the State of Missouri passed a very similar bill and they included the alcohol ban. Is the purpose to make this bill easier to pass or is it to remove the ban on alcohol?

Representative Rubin said he was not aware of any successful challenge to the Missouri provision. So that is not my primary motive. It is my concern that this would completely shut down one type of business. Representative Knox said that he would oppose this amendment.

Representative Holmes asked Representative Rubin. By striking sub (c) does it make the section above it about the age of 18 a moot point or do you want to strike it also? Representative Rubin said that sub (b) should stay in the bill. Representative Holmes said the reason for the question is that if we have alcohol the age limit would have to be raised to 21. They agreed that at age 18 they could go in but they could not drink until age 21.

Representative Gregory asked if some of these businesses do not sell alcohol and Representative Rubin

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agreed that some did not sell alcohol. Representative Gregory said she would be neutral on the amendment.

Representative Goico said that some of these businesses are bars and selling alcohol is their business.

Representative Loganbill said she would oppose the amendment.

Representative Patton said that he opposed the amendment. He said that the regulations in the bill were narrowly drawn and the Supreme Court said that these are reasonable regulations. The courts have said that these regulations are reasonably related to deal with the negative secondary affects. They draw crime in and alcohol is a significant part of the problem. The argument that it will shut down their business is not true.

There was no further discussion on the amendment. Representative Rubin's motion carried.

Representative Rubin requested another amendment that he said would strengthen the proximity limitations. He proposed to strike the word "portion" and add the words "property line" on page 6, lines 8-9. Representative O'Hara seconded the motion. He said that the property line would be some distance further that the building line and that will provide even greater separation.

Representative Loganbill asked it that would help the folks in Meridan? The words "property line" should take care of that problem.

The motion carried. We are back on the bill.

Representative Knox made a motion to pass the bill favorably as amended. Representative Rubin seconded the motion.

Representative Loganbill suggested that we do a substitute bill to clean it up. Mike Heim said that he did not think the amendments were extensive enough to warrant that. The Chairman said that he thought we were OK without it.

Representative Goico made a motion to interpolate the language from the revisor into the bill. Seconded by Representative Gregory. The motion carried.

The next meeting is scheduled for March 02, 2011.

The meeting was adjourned at 2:37 p.m.

# HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

2.18.11

ROOM 346-S

NAME	REPRESENTING
Phillip Cosby	NCP CF
Clancy Hokenan	Riley County
Monty Wedel	Riley County
John Milburn	AP
Bill Brady	C.S
<del>John Mary Pickett - Cook</del>	myself
Mark Eng Stein	myself
Phil Bradley	KURA EES
Berend Koops	Hein Law Firm
Edward Larson	KS Catholic Conference
Michael Schutthoffel	" " "
Gary [unclear]	SCCHS
Chris [unclear]	KHA
John Peterson	Cy. Int. Strategy
Aimee Rosenow	Witken - O'Brien
Theresa Martner	Concerned Women for America
Marcia Kintler	Concerned Women for America
Stowell	me

## HOUSE BILL No. 2107

By Committee on Federal and State Affairs

1-26

1 AN ACT establishing the community defense act; amending K.S.A. 2010  
2 Supp. 22-3901 and repealing the existing section.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. The provisions of sections 1 through 11, and  
6 amendments thereto, shall be known and may be cited as the community  
7 defense act.

8 New Sec. 2. (a) The purpose of the community defense act is to  
9 regulate sexually oriented businesses in order to promote the health,  
10 safety and general welfare of the citizens of Kansas, and to establish  
11 reasonable and uniform regulations to prevent the deleterious secondary  
12 effects of sexually oriented businesses within the state. The provisions of  
13 this act have neither the purpose nor effect of imposing a limitation or  
14 restriction on the content or reasonable access to any communicative  
15 materials, including sexually oriented materials. Similarly, it is neither the  
16 intent nor effect of this act to restrict or deny access by adults to sexually  
17 oriented materials protected by the first amendment, or to deny access by  
18 the distributors and exhibitors of sexually oriented entertainment to their  
19 intended market. Neither is it the intent nor effect of this act to condone  
20 or legitimize the distribution of obscene material.

21 (b) The legislature finds:

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

29 (2) Sexually oriented businesses should be separated from sensitive  
30 land uses to minimize the impact of their secondary effects upon such  
31 uses, and should be separated from other sexually oriented businesses, to  
32 minimize the secondary effects associated with such uses and to prevent  
33 an unnecessary concentration of sexually oriented businesses in one area.

34 (3) Each of the foregoing negative secondary effects constitutes a  
35 harm which the state has substantial interest in preventing or abating.  
36 Such substantial government interest is preventing secondary effects,

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Attachment 1

1 line of sight from the operator's station.

2 (b) It shall be the duty of the operator to ensure that at least one  
3 employee is on duty and situated in an operator's station at all times that  
4 any patron is on the portion of the premises monitored by that operator  
5 station. It shall be the duty of the operator, and it shall also be the duty of  
6 any employees present on the premises, to ensure that the view area  
7 specified in subsection (a) remains unobstructed by any doors, curtains,  
8 walls, merchandise, display racks or other materials or enclosures at all  
9 times that any patron is present on the premises.

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

18 New Sec. 8. ~~(a) No operator shall allow or permit a sexually oriented~~  
19 ~~business to be or remain open between the hours of 12:00 midnight and~~  
20 ~~6:00 a.m. on any day.~~

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

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

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

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

41 New Sec. 11. If any provision of sections 1 through 11, and  
42 amendments thereto, or the application thereof to any persons or  
43 circumstances is held to be invalid, such invalidity shall not affect other

provisions or application of sections 1 through 11, and amendments thereto, and to this end the provisions of sections 1 through 11, and amendments thereto, are declared to be severable.

New Sec. 12. Nothing in this act shall prevent any city or county from enacting or enforcing any local ordinance or resolution concerning the regulation of sexually oriented businesses or similar adult oriented businesses which is ~~stricter than but not inconsistent~~ with the act.

in conflict

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

- (a) Commercial gambling;
- (b) dealing in gambling devices;
- (c) possession of gambling devices;
- (d) promoting obscenity;
- (e) promoting prostitution;
- (f) habitually promoting prostitution;
- (g) violations of any law regulating controlled substances;
- (h) habitual violations of any law regulating the sale or exchange of alcoholic liquor or cereal malt beverages, by any person not licensed pursuant to chapter 41 of the Kansas Statutes Annotated;

(i) habitual violations of any law regulating the sale or exchange of cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated;

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

- (1) Consisting of three or more persons;
- (2) having as one of its primary activities the commission of one or more person felonies, person misdemeanors, felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;
- (3) which has a common name or common identifying sign or symbol; and
- (4) whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, person misdemeanors, felony violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and

1-3

1 amendments thereto, any felony violation of any provision of the uniform  
2 controlled substances act prior to July 1, 2009, or the comparable juvenile  
3 offenses, which if committed by an adult would constitute the  
4 commission of such felonies or misdemeanors, or any substantially  
5 similar offense from another jurisdiction; or

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

6  
7 ~~(k)~~ use of pyrotechnics, pyrotechnic devices or pyrotechnic  
8 materials in violation of K.S.A. 2010 Supp. 31-170, and amendments  
9 thereto.

(l)

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

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

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

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