

**House Substitute for SENATE BILL No. 25**

By Committee on Federal and State Affairs

3-30

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, safety  
10 and general welfare of the citizens of Kansas, and to establish reasonable  
11 and uniform regulations to prevent the deleterious secondary effects of  
12 sexually oriented businesses within the state. The provisions of this act  
13 have neither the purpose nor effect of imposing a limitation or restriction  
14 on the content or reasonable access to any communicative materials,  
15 including sexually oriented materials. Similarly, it is neither the intent nor  
16 effect of this act to restrict or deny access by adults to sexually oriented  
17 materials protected by the first amendment, or to deny access by the  
18 distributors and exhibitors of sexually oriented entertainment to their  
19 intended market. Neither is it the intent nor effect of this act to condone or  
20 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 an  
33 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. Such  
36 substantial government interest is preventing secondary effects, which is

1 the state's rationale for this act, and exists independent of any comparative  
2 analysis between sexually oriented and nonsexually oriented businesses.  
3 Additionally, the state's interest in regulating sexually oriented businesses  
4 extends to preventing future secondary effects of current or future sexually  
5 oriented businesses that may locate in the state.

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

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

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

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

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

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

31 (4) derives a substantial portion of its revenues from the sale or  
32 rental, for any form of consideration, of such items;

33 (5) maintains a substantial section of its interior business space for  
34 the sale or rental of such items; or

35 (6) maintains an adult arcade.

36 (c) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle  
37 club or other commercial establishment, regardless of whether alcoholic  
38 beverages are served, which regularly features persons who appear semi-  
39 nude.

40 (d) "Adult motion picture theater" means a commercial establishment  
41 where films, motion pictures, video cassettes, slides or similar  
42 photographic reproductions, which are characterized by their emphasis  
43 upon the display of specified sexual activities or specified anatomical

1 areas, are regularly shown to more than five persons for any form of  
2 consideration.

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

5 (f) "Employ, employee and employment" means any person who  
6 performs any service on the premises of a sexually oriented business, on a  
7 full-time, part-time or contract basis, whether or not the person is  
8 denominated an employee, independent contractor, agent or otherwise.  
9 "Employee" does not mean a person exclusively on the premises for repair  
10 or maintenance of the premises or for the delivery of goods to the  
11 premises.

12 (g) "Establish or establishment" means and includes any of the  
13 following:

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

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

18 (3) the addition of any sexually oriented business to any other  
19 existing sexually oriented business.

20 (h) "Influential interest" means any of the following:

21 (1) The actual power to operate the sexually oriented business or  
22 control the operation, management or policies of the sexually oriented  
23 business or legal entity which operates the sexually oriented business;

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

26 (3) holding an office, including, but not limited to, the office of  
27 president, vice president, secretary, treasurer, managing member or  
28 managing director in a legal entity which operates the sexually oriented  
29 business.

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

34 (j) "Operator" means any person on the premises of a sexually  
35 oriented business who causes the business to function or who puts or keeps  
36 in operation the business or who is authorized to manage the business or  
37 exercise overall operational control of the business premises. A person  
38 may be found to be operating or causing to be operated a sexually oriented  
39 business whether or not that person is an owner, part owner or licensee of  
40 the business.

41 (k) "Premises" means the real property upon which the sexually  
42 oriented business is located, and all appurtenances thereto and buildings  
43 thereon, including, but not limited to, the sexually oriented business, the

1 grounds, private walkways, parking lots and parking garages adjacent  
2 thereto, under the ownership, control or supervision of the licensee, as  
3 described in the application for a sexually oriented business license.

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

6 (m) "Semi-nude or state of semi-nudity" means the showing of the  
7 female breast below a horizontal line across the top of the areola and  
8 extending across the width of the breast at that point or the showing of the  
9 male or female buttocks. This definition shall include the lower portion of  
10 the human female breast, but shall not include any portion of the cleavage  
11 of the human female breasts exhibited by a bikini, dress, blouse, shirt,  
12 leotard or similar wearing apparel provided the areola is not exposed in  
13 whole or in part.

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

20 (1) By a postsecondary educational institution, as defined in K.S.A.  
21 74-3201b, and amendments thereto, supported entirely or partly by state  
22 moneys;

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

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

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

37 (p) "Sexual device shop" means a commercial establishment that  
38 regularly features sexual devices. Nothing in this definition shall be  
39 construed to include any pharmacy, drug store, medical clinic or any  
40 establishment primarily dedicated to providing medical or healthcare  
41 products or services, nor shall this definition be construed to include  
42 commercial establishments which do not restrict access to their premises  
43 by reason of age.

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

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

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

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

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

16 (t) "Specified criminal activity" means any of the following specified  
17 offenses, by a person who, within the preceding eight years, has been  
18 convicted of, or released from confinement for:

19 (1) *Any offense set forth in K.S.A. 21-3502, 21-3503, 21-3504, 21-*  
20 *3505, 21-3506, 21-3507, 21-3508, 21-3510, 21-3511, 21-3512, 21-3513,*  
21 *21-3515, 21-3516, 21-3517, 21-3518, 21-3520, 21-3522 or 21-3523, prior*  
22 *to their repeal;*

23 (2) any offense set forth in sections 67, 68, 69, 70, 71, 72, 73, 74, 75,  
24 76, 77, 229, 230 and 231 of chapter 136 of the 2010 Session Laws of  
25 Kansas, and amendments thereto;

26 (3) *any offense set forth in K.S.A. 21-4301, 21-4301a, 21-4301b or*  
27 *21-4301c, prior to their repeal;*

28 (4) any offense set forth in section 212 or 213 of chapter 136 of the  
29 2010 Session Laws of Kansas, and amendments thereto;

30 (5) any offense set forth in K.S.A. 2010 Supp 21-36a01 through 21-  
31 36a17, and amendments thereto;

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

35 (7) any attempt, solicitation or conspiracy to commit an offense in  
36 paragraphs (1) through (4); or

37 (8) any offense under the laws of another jurisdiction which is  
38 substantially the same as an offense in paragraphs (1) through (5).

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

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

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

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

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

5 New Sec. 4. (a) No person shall establish a sexually oriented business  
6 within 1,000 feet of any preexisting accredited public or private  
7 elementary or secondary school, house of worship, state-licensed day care  
8 facility, public library, public park, residence or other sexually oriented  
9 business. For purposes of this subsection, measurements shall be made in a  
10 straight line, without regard to intervening structures or objects, from the  
11 closest *property line* of the parcel containing the sexually oriented business  
12 to the closest *property line* of the parcel containing the preexisting  
13 elementary or secondary school, house of worship, state-licensed day care  
14 facility, public library, public park, residence or other sexually oriented  
15 business. This subsection shall not apply to any sexually oriented business  
16 lawfully established prior to the effective date of this act.

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

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

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

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

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

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

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

42 (3) if the premises has two or more operator's stations designated,  
43 then the interior of the premises shall be configured in such a manner that

1 there is an unobstructed view of each area of the premises to which any  
2 patron is permitted access for any purpose from at least one of the  
3 operator's stations. The view required by this subsection must be by direct  
4 line of sight from the operator's station.

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

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

21 New Sec. 8. (a) No operator shall allow or permit a sexually oriented  
22 business to be or remain open between the hours of 12:00 midnight and  
23 6:00 a.m. on any day.

24 (b) No person shall knowingly allow a person under the age of 18  
25 years on the premises of a sexually oriented 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 and  
31 that such officer, director, general partner or a person who managed,  
32 supervised or controlled the operation of the sexually oriented business did  
33 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 employee  
35 which act forms the basis for the violation.

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

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

4 New Sec. 12. Nothing in this act shall prevent any city or county  
5 from enacting or enforcing any local ordinance or resolution concerning  
6 the regulation of sexually oriented businesses or similar adult oriented  
7 businesses which is *not in conflict* with the act.

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

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

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 commission  
4 of such felonies or misdemeanors, or any substantially similar offense  
5 from another jurisdiction; ~~or~~

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

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

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

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

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