

## HOUSE BILL No. 2835

By Representative Kinzer

2-12

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9 AN ACT creating the sexually oriented business regulation act; amending  
10 K.S.A. 22-3901 and repealing the existing section.

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

13 New Section 1. The provisions of sections 1 through 11, and amend-  
14 ments thereto, shall be known and may be cited as the sexually oriented  
15 business regulation act.

16 New Sec. 2. The purpose of this act is to regulate sexually oriented  
17 businesses in order to promote the health, safety, and general welfare of  
18 the citizens of Kansas, and to establish reasonable and uniform regulations  
19 to prevent the deleterious secondary effects of sexually oriented busi-  
20 nesses within the state. The provisions of this act have neither the purpose  
21 nor effect of imposing a limitation or restriction on the content or rea-  
22 sonable access to any communicative materials, including sexually ori-  
23 ented materials. Similarly, it is neither the intent nor effect of this act to  
24 restrict or deny access by adults to sexually oriented materials protected  
25 by the first amendment, or to deny access by the distributors and exhib-  
26 itors of sexually oriented entertainment to their intended market. Neither  
27 is it the intent nor effect of this act to condone or legitimize the distri-  
28 bution of obscene material.

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

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

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

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

1 sexually oriented business.

2 (h) “Influential interest” means any of the following:

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

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

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

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

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

22 (k) “Person” means any individual, partnership, corporation, associ-  
23 ation or other legal entity.

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

30 (m) “Regularly” means and refers to the consistent and repeated do-  
31 ing of the act so described.

32 (n) “Semi-nude or state of semi-nudity” means the showing of the  
33 female breast below a horizontal line across the top of the areola and  
34 extending across the width of the breast at that point or the showing of  
35 the male or female buttocks. This definition shall include the lower por-  
36 tion of the human female breast, but shall not include any portion of the  
37 cleavage of the human female breasts exhibited by a bikini, dress, blouse,  
38 shirt, leotard or similar wearing apparel provided the areola is not exposed  
39 in whole or in part.

40 (o) “Semi-nude model studio” means a place where persons regularly  
41 appear in a state of semi-nudity for money or any form of consideration  
42 in order to be observed, sketched, drawn, painted, sculptured, photo-  
43 graphed or similarly depicted by other persons. “Semi-nude model stu-

- 1 dio” shall not include any place where persons appearing in a state of  
2 semi-nudity did so in a modeling class operated:
- 3 (1) By a college, junior college or university supported entirely or  
4 partly by taxation;
- 5 (2) by a private college or university which maintains and operates  
6 educational programs in which credits are transferable to a college, junior  
7 college or university supported entirely or partly by taxation; or
- 8 (3) in a structure which has no sign visible from the exterior of the  
9 structure and no other advertising that indicates a semi-nude person is  
10 available for viewing, and where, in order to participate in a class, a stu-  
11 dent must enroll at least three days in advance of the class.
- 12 (p) “Sexual device” means any three dimensional object designed and  
13 marketed for stimulation of the male or female human genitals, anus,  
14 female breast or for sadomasochistic use or abuse of oneself or others  
15 and shall include devices such as dildos, vibrators, penis pumps and phys-  
16 ical representations of the human genital organs. Nothing in this defini-  
17 tion shall be construed to include devices primarily intended for protec-  
18 tion against sexually transmitted diseases or for preventing pregnancy.
- 19 (q) “Sexual device shop” means a commercial establishment that reg-  
20 ularly features sexual devices. Nothing in this definition shall be construed  
21 to include any pharmacy, drug store, medical clinic or any establishment  
22 primarily dedicated to providing medical or healthcare products or serv-  
23 ices, nor shall this definition be construed to include commercial estab-  
24 lishments which do not restrict access to their premises by reason of age.
- 25 (r) “Sexual encounter center” shall mean a business or commercial  
26 enterprise that, as one of its principal business purposes, purports to offer  
27 for any form of consideration, physical contact in the form of wrestling  
28 or tumbling between persons of the opposite sex when one or more of  
29 the persons is semi-nude.
- 30 (s) “Sexually oriented business” means an adult bookstore or adult  
31 video store, an adult cabaret, an adult motion picture theater, a semi-  
32 nude model studio, a sexual device shop or a sexual encounter center.
- 33 (t) “Specified anatomical areas” means and includes:
- 34 (1) Less than completely and opaquely covered: Human genitals; pu-  
35 bic region; buttock; and female breast below a point immediately above  
36 the top of the areola; and
- 37 (2) human male genitals in a discernibly turgid state, even if com-  
38 pletely and opaquely covered.
- 39 (u) “Specified criminal activity” means any of the following specified  
40 offenses, as amended from time to time, for which less than eight years  
41 elapsed since the date of conviction or the date of release from confine-  
42 ment for the conviction, whichever is the later date:
- 43 (1) Any offense set forth in K.S.A. 21-3502 through 21-3522, and

- 1 amendments thereto;
- 2 (2) any offense set forth in K.S.A. 21-4301 through 21-4301c, and
- 3 amendments thereto;
- 4 (3) any offense set forth in K.S.A. 65-4101 et seq., and amendments
- 5 thereto;
- 6 (4) any offense set forth in K.S.A. 79-3228, and amendments thereto,
- 7 or any other provision of law which prescribes criminal conduct with
- 8 regard to the Kansas income tax act;
- 9 (5) any attempt, solicitation or conspiracy to commit one of the fore-
- 10 going offenses; or
- 11 (6) any offense in another jurisdiction that, had the predicate acts
- 12 been committed in Kansas, would have constituted any of the foregoing
- 13 offenses.
- 14 (v) “Specified sexual activity” means any of the following:
- 15 (1) Intercourse, oral copulation, masturbation or sodomy; or
- 16 (2) excretory functions as a part of or in connection with any of the
- 17 activities described in paragraph (1).
- 18 (w) “Substantial” means at least 30% of the items so modified.
- 19 (x) “Viewing room” shall mean the room, booth or area where a pa-
- 20 tron of a sexually oriented business would ordinarily be positioned while
- 21 watching a film, videocassette, digital video disc or other video
- 22 reproduction.
- 23 New Sec. 4. (a) No person shall establish a sexually oriented business
- 24 within 1,000 feet of any preexisting primary or secondary school, house
- 25 of worship, state-licensed day care facility, public library, public park,
- 26 residence or other sexually oriented business. For purposes of this sub-
- 27 section, measurements shall be made in a straight line, without regard to
- 28 intervening structures or objects, from the closest portion of the parcel
- 29 containing the sexually oriented business to the closest portion of the
- 30 parcel containing the preexisting primary or secondary school, house of
- 31 worship, state-licensed day care facility, public library, public park, resi-
- 32 dence or other sexually oriented business. This subsection shall not apply
- 33 to any sexually oriented business lawfully established prior to the effective
- 34 date of this act.
- 35 (b) No person shall establish a sexually oriented business if a person
- 36 with an influential interest in the sexually oriented business has been
- 37 convicted of, pled guilty to or pled nolo contendere to a specified criminal
- 38 activity, as defined in section 3, and amendments thereto.
- 39 New Sec. 5. (a) No person shall knowingly or intentionally, in a sex-
- 40 ually oriented business, appear in a state of nudity.
- 41 (b) No employee shall knowingly or intentionally, in a sexually ori-
- 42 ented business, appear in a semi-nude condition unless the employee,
- 43 while semi-nude, shall be and remain on a fixed stage at least six feet

1 from all patrons and at least 18 inches from the floor in a room of at least  
2 600 square feet.

3 (c) No employee who appears in a semi-nude condition in a sexually  
4 oriented business shall knowingly or intentionally touch a patron or the  
5 clothing of a patron in a sexually oriented business.

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

11 (1) The interior of the premises shall be configured in such a manner  
12 that there is an unobstructed view from an operator's station of every area  
13 of the premises, including the interior of each viewing room, but exclud-  
14 ing restrooms, to which any patron is permitted access for any purpose;

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

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

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

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

38 New Sec. 8. (a) No operator shall allow or permit a sexually oriented  
39 business to be or remain open between the hours of 12:00 midnight and  
40 6:00 A.M. on any day.

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

43 (c) No person shall knowingly allow a person under the age of 18

1 years on the premises of a sexually oriented business.

2 New Sec. 9. For the purposes of sections 1 through 11, and amend-  
3 ments thereto, it shall be a defense to liability for an officer, director,  
4 general partner or a person who managed, supervised or controlled the  
5 operation of the sexually oriented business that the act which forms the  
6 basis for the violation was committed by an employee and that such of-  
7 ficer, director, general partner or a person who managed, supervised or  
8 controlled the operation of the sexually oriented business did not know-  
9 ingly or recklessly allow such act by the employee. It shall also be a de-  
10 fense to liability under the provisions of sections 1 through 11, and  
11 amendments thereto, that the officer, director, general partner or a per-  
12 son who managed, supervised or controlled the operation of the sexually  
13 oriented business to whom liability is imputed was powerless to prevent  
14 the act of an employee which act forms the basis for the violation.

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

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

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

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

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

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

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

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

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