

1 AN ACT relating to adult-oriented businesses and declaring an emergency.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 231 IS CREATED TO  
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 5 of this Act:*

6 *(1) "Adult arcade" means any place where the public is permitted or invited and*  
7 *where a still or motion picture machine, projector, or other image-producing*  
8 *device is:*

9 *(a) Coin-operated or slug-operated; or*

10 *(b) Electronically, electrically, or mechanically controlled; and*

11 *(c) Maintained to show an image or images involving sexual conduct or nudity*  
12 *to a person in a booth or viewing room;*

13 *(2) "Adult bookstore or video store" means a commercial establishment that has at*  
14 *least twenty percent (20%) of its displayed merchandise, revenue, or public area*  
15 *dedicated to or derived from the sale, viewing, or rental of any of the following:*

16 *(a) Books, magazines, periodicals, or other printed matter that depict or*  
17 *describe sexual conduct or nudity;*

18 *(b) Photographs, films, motion pictures, digital videos or audio streams,*  
19 *videocassettes, reproductions, slides, or other visual representations that*  
20 *depict or describe sexual conduct or nudity; or*

21 *(c) Instruments, devices, or paraphernalia that are designed for use in*  
22 *connection with sexual conduct;*

23 *(3) "Adult cabaret" means any nightclub, bar, restaurant, or other similar*  
24 *commercial establishment that predominantly features a:*

25 *(a) Person who appears in a state of nudity;*

26 *(b) Live performance that is characterized by nudity or sexual conduct;*

27 *(c) Film, motion picture, digital video stream, videocassette, slide, or other*

1 similar photographic reproduction that is characterized by the depiction or  
2 description of sexual conduct or nudity; or

3 (d) Performance with explicitly sexual conduct in which a male or female  
4 performer sings, lip syncs, dances, reads, or otherwise performs before an  
5 audience for entertainment while exhibiting an exaggerated gender  
6 expression that is inconsistent with the biological sex of the performer using  
7 clothing, makeup, or other physical markers, and this expression is a  
8 caricatured, advertised, or featured aspect of the performance taken as a  
9 whole;

10 (4) "Adult-oriented business" means an adult arcade, adult bookstore or video store,  
11 adult cabaret, adult theater, or any establishment that predominantly hosts any  
12 performance involving sexual conduct;

13 (5) "Adult theater" means a theater, concert hall, auditorium, motion picture  
14 theater, or other commercial establishment that predominantly;

15 (a) Features a person who appears in a state of nudity or who engages in a live  
16 performance that is characterized by nudity or sexual conduct; or

17 (b) Shows, for any form of consideration, films, motion pictures, digital video  
18 streams, slides, or other similar photographic reproductions characterized  
19 by the depiction or description of sexual conduct or nudity;

20 (6) "Biological sex" means being male or female, as determined by a person's sex  
21 chromosomes;

22 (7) "Child-care facility" means;

23 (a) Any child-care center that provides full-time or part-time care, day or night,  
24 to four (4) or more children in a nonresidential setting who are not the  
25 children, grandchildren, nieces, nephews, or in the legal custody of the  
26 provider;

27 (b) A private home that is the primary residence of an individual who provides

- 1           full-time or part-time care at this residence, day or night, for six (6) or fewer  
2           children who are not the children, siblings, stepchildren, grandchildren,  
3           nieces, nephews, or in the legal custody of the provider;
- 4           (c) A facility that operates as an outside school hours center for youth who are  
5           five (5) years of age or older; or
- 6           (d) A facility that is licensed by the Cabinet for Health and Family Services to  
7           provide care or supervision for minor children;
- 8           (8) "Children's amusement establishment" means an amusement park, trampoline  
9           park, inflatable play facility, laser tag facility, go kart track, skating park or  
10           skating rink, video game arcade, or any commercial establishment primarily  
11           dedicated to providing entertainment activities that cater to minors;
- 12           (9) "Educational occupancy" means the occupancy or use of a building or structure  
13           or any portion of a building or structure by persons assembled for the purpose of  
14           learning or of receiving educational instruction and includes, whether private or  
15           public in nature:
- 16           (a) Academies;  
17           (b) Care centers;  
18           (c) Kindergartens;  
19           (d) Libraries;  
20           (e) Preschools;  
21           (f) Relocatable classroom units;  
22           (g) Schools; and  
23           (h) Seminaries;
- 24           (10) "Harmful to minors" means that quality of any description, depiction, or  
25           representation, in whatever form, of nudity, sexual conduct, sexual excitement, or  
26           sadomasochistic abuse when it:
- 27           (a) Taken as a whole, appeals to the prurient interest of minors;

1 (b) Is patently offensive to prevailing standards in the adult community as a  
2 whole with respect to what is suitable for minors; and

3 (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value  
4 for minors;

5 (11) "Lease" means a lease, lease-purchase, lease with option to purchase,  
6 installment sale agreement, or other similar agreement;

7 (12) "Local government" has the same meaning as in KRS 45.237;

8 (13) "Minor" has the same meaning as in KRS 500.080;

9 (14) "Nude," "nudity," or "state of nudity" means:

10 (a) Showing of actual or simulated human male or female genitals or pubic  
11 area with less than a fully opaque covering;

12 (b) Showing of the actual or simulated adult or adolescent female breast with  
13 less than a fully opaque covering of any portion below the top of the areola;  
14 or

15 (c) Depiction of actual or simulated covered male genitals in a discernibly  
16 turgid state;

17 (15) "Obscene" has the same meaning as in KRS 531.010;

18 (16) "Park," "recreational area," or "recreational facility" means any land or facility  
19 that has been designed for recreational activities and is open for use by minors,  
20 including but not limited to playgrounds, nature trails, swimming pools,  
21 reservoirs, wilderness areas, YMCA or YWCA facilities, and both indoor and  
22 outdoor athletic courts and fields commonly used for youth sport activities, that  
23 are under the operation or management of a private entity, the Commonwealth,  
24 or any of its political subdivisions;

25 (17) "Place of worship" means a structure where persons regularly assemble for  
26 worship, teaching, training, providing educational services, conducting religious  
27 rituals, or other activities deemed necessary by a religious organization for the

1 exercise of religion; and

2 (18) "Sexual conduct" means:

3 (a) A sex act, actual or simulated, including an act of human masturbation,  
 4 bestiality, defecation, flagellation, or urination for the purpose of sexual  
 5 stimulation or sexual gratification, or sexual intercourse or deviate sexual  
 6 intercourse as those terms are defined in KRS 510.010;

7 (b) Fondling or other erotic touching of a human genital, pubic region,  
 8 buttock, anus, or a female breast; or

9 (c) Any act that involves the intentional removal or simulated removal of  
 10 clothing in a sexual manner, or intentional nudity, for the entertainment of  
 11 one (1) or more individuals.

12 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 231 IS CREATED TO  
 13 READ AS FOLLOWS:

14 (1) An adult-oriented business shall not be located within nine hundred thirty-three  
 15 (933) feet of a:

16 (a) Child-care facility or children's amusement establishment;

17 (b) Building with educational occupancy;

18 (c) Park, recreational area, or recreational facility; or

19 (d) Place of worship.

20 (2) A business that is not an adult-oriented business shall not conduct business  
 21 activities that cause it to become an adult-oriented business while located within  
 22 nine hundred thirty-three (933) feet of any establishment set out under subsection  
 23 (1) of this section.

24 (3) For purposes of this section, the measurement required in subsections (1) and (2)  
 25 of this section shall be made in a straight line in all directions, without regard to  
 26 intervening structures or objects, from the nearest point on the property line or a  
 27 parcel containing an adult-oriented business to the nearest point on the property

1 line of a parcel containing any establishment identified in subsection (1) of this  
2 section.

3 (4) An adult-oriented business shall ensure that:

4 (a) No minor gains access to the premises; and

5 (b) No obscene, harmful to minors, or patently vulgar matter or performance,  
6 performance with explicitly sexual conduct, or visual representation of  
7 nudity or sexual conduct is visible to minors.

8 (5) An adult-oriented business shall not employ any person under the age of eighteen  
9 (18) years.

10 (6) (a) It shall be unlawful for a person to knowingly allow a minor to enter or  
11 remain on or near the premises of an adult-oriented business.

12 (b) Any adult-oriented business that violates this subsection shall be subject to:

13 1. Suspension or revocation of any business license, license to sell  
14 alcoholic beverages, or certificate of occupancy;

15 2. Denial or refusal to renew a license or certificate of occupancy;

16 3. A cease and desist order; or

17 4. All or any combination of the actions in subparagraphs 1., 2., and 3.  
18 of this paragraph;

19 as determined by the issuing or governing authority.

20 (7) An adult-oriented business operating in conformity with this section shall not be  
21 in violation of this section if any establishment identified in subsection (1) of this  
22 section subsequently locates within nine hundred thirty-three (933) feet of the  
23 adult-oriented business.

24 (8) Any performance involving sexual conduct, any performance with explicitly  
25 sexual conduct, or any other activity that would cause a business to be classified  
26 as an adult-oriented business as defined in Section 1 of this Act shall be  
27 prohibited on the premises or any property owned, leased, or operated by the

1 Commonwealth or any of its political subdivisions.

2 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 231 IS CREATED TO  
3 READ AS FOLLOWS:

4 (1) The Attorney General, a Commonwealth's attorney, or a county attorney who has  
5 reason to believe that an adult-oriented business is operating in violation of  
6 Section 2 of this Act may bring a civil cause of action against the business. The  
7 action shall be brought in the Circuit Court of the county in which the violation  
8 occurred.

9 (2) If the court finds by a preponderance of the evidence that the defendant violated  
10 Section 2 of this Act, the remedies available to the plaintiff shall include:

11 (a) Declaratory relief;

12 (b) Temporary or permanent injunctive relief to enjoin the defendant from  
13 continuing the violation or violations;

14 (c) Compensatory damages for pecuniary or nonpecuniary losses, or both;

15 (d) Reasonable costs; and

16 (e) Any other appropriate relief.

17 (3) The remedies and penalties provided under this section are supplemental to those  
18 provisions of any local, state, and federal criminal and civil law which impose  
19 prohibitions or provide penalties, sanctions, or remedies against the same  
20 conduct prohibited by Section 2 of this Act or for violations of this section.

21 (4) Any adult-oriented business that knowingly violates any provision of Section 2 of  
22 this Act may be subject to suspension or termination of its license to sell alcoholic  
23 beverages under KRS Chapter 243, any other statute or local ordinance of the  
24 Commonwealth or political subdivision of the Commonwealth, or by the  
25 Department of Alcoholic Beverage Control.

26 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 231 IS CREATED TO  
27 READ AS FOLLOWS:

1 (1) A commercial establishment that was lawfully established and legally operating  
2 as an adult-oriented business before the effective date of this Act may continue  
3 operating as an adult-oriented business in a location that does not conform to the  
4 requirements of Section 2 of this Act.

5 (2) The protection provided in subsection (1) of this section shall not be removed,  
6 terminated, or affected by the sale or transfer of ownership of any adult-oriented  
7 business lawfully established and legally operating on the effective date of this  
8 Act, or by any change in zoning other than as applicable to all businesses after  
9 the effective date of this Act.

10 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 231 IS CREATED TO  
11 READ AS FOLLOWS:

12 (1) A local government may continue to enforce any preexisting ordinance,  
13 resolution, or regulation, and shall retain the authority to adopt any ordinance,  
14 resolution, or regulation concerning the licensing, zoning, location, and  
15 operation of adult-oriented businesses and similar adult-oriented enterprises  
16 within the local government's jurisdiction in conformity with subsection (2) of  
17 this section.

18 (2) Nothing in Sections 1 to 5 of this Act shall preempt any ordinance, resolution, or  
19 regulation of any local government that is at least as restrictive as the  
20 requirements established under Section 2 of this Act.

21 ➔Section 6. Whereas the health, safety, and general welfare of minors and other  
22 citizens of this Commonwealth are of the highest importance, an emergency is declared  
23 to exist, and this Act takes effect upon its passage and approval by the Governor or upon  
24 its otherwise becoming a law.