

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 *(1) The General Assembly enacts Sections 1 to 6 of this Act to regulate the location*
6 *of, and access to, adult-oriented businesses to promote the health, safety, and*
7 *general welfare of the citizens of this Commonwealth and to establish reasonable*
8 *regulations to abate and prevent the deleterious secondary effects of adult-*
9 *oriented businesses near sensitive land uses and locations that cater to minors.*

10 *(2) It is not the purpose of Sections 1 to 6 of this Act to:*

11 *(a) Impose a limitation or restriction on the content or reasonable access by*
12 *adults to any communicative materials, including adult-oriented materials,*
13 *protected by the First Amendment to the Constitution of the United States;*

14 *(b) Deny access by the distributors and exhibitors of adult-oriented*
15 *entertainment to their intended market; or*

16 *(c) Condone or legitimize the distribution of obscene material.*

17 *(3) The General Assembly finds and declares:*

18 *(a) Adult-oriented businesses, as a category of commercial use, are associated*
19 *with a wide variety of adverse secondary effects, including crimes against*
20 *persons and property, human trafficking, prostitution, potential spread of*
21 *disease, lewdness, public indecency, vulgarity, weakening of public*
22 *morality, obscenity, illicit drug use and drug trafficking, negative impacts*
23 *on surrounding properties and their value, urban blight, litter, and sexual*
24 *assault and exploitation;*

25 *(b) Adult-oriented businesses should be separated from sensitive land uses to*
26 *minimize the impact of their secondary effects upon these uses, and should*
27 *be separated from other adult-oriented businesses to minimize the*

- 1 secondary effects associated with adult-oriented businesses and to prevent
2 an unnecessary concentration of adult-oriented businesses in one (1) area;
3 (c) Access to adult-oriented businesses should be limited exclusively to mentally
4 competent adults;
5 (d) To ensure that minors are not subjected to adult entertainment, it is
6 necessary to prohibit adult-oriented businesses from allowing adult
7 entertainment performances or visual representations of adult
8 entertainment performances displaying nudity or sexual conduct from being
9 visible to minors; and
10 (e) Each negative secondary effect described in this section constitutes a harm
11 which the Commonwealth has a substantial government interest in
12 preventing and abating. The Commonwealth's interest in regulating adult-
13 oriented businesses extends to preventing future secondary effects of both
14 current and future adult-oriented businesses that may locate in the state.

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

17 As used in Sections 1 to 6 of this Act:

- 18 (1) "Adult arcade" means any place where the public is permitted or invited and
19 where a still or motion picture machine, projector, or other image-producing
20 device is:
21 (a) Coin-operated or slug-operated; or
22 (b) Electronically, electrically, or mechanically controlled; and
23 (c) Maintained to show an image or images involving sexual conduct or nudity
24 to a person in a booth or viewing room;
25 (2) "Adult bookstore or video store" means a commercial establishment that has at
26 least twenty percent (20%) of its displayed merchandise, revenue, or public area
27 dedicated to or derived from the sale, viewing, or rental of any of the following:

- 1 (a) Books, magazines, periodicals, or other printed matter that depict or
2 describe sexual conduct or nudity;
- 3 (b) Photographs, films, motion pictures, digital videos or audio streams,
4 videocassettes, reproductions, slides, or other visual representations that
5 depict or describe sexual conduct or nudity; or
- 6 (c) Instruments, devices, or paraphernalia that are designed for use in
7 connection with sexual conduct;
- 8 (3) "Adult cabaret" means any nightclub, bar, restaurant, or other similar
9 commercial establishment that regularly features a:
- 10 (a) Person who appears in a state of nudity;
- 11 (b) Live performance that is characterized by nudity or sexual conduct; or
- 12 (c) Film, motion picture, digital video stream, videocassette, slide, or other
13 similar photographic reproduction that is characterized by the depiction or
14 description of sexual conduct or nudity;
- 15 (4) "Adult-oriented business" means an adult arcade, adult bookstore or video store,
16 adult cabaret, adult theater, or any establishment that hosts sexually explicit drag
17 performances or any performance involving sexual conduct;
- 18 (5) "Adult theater" means a theater, concert hall, auditorium, motion picture
19 theater, or other commercial establishment that predominantly:
- 20 (a) Features a person who appears in a state of nudity or who engages in a live
21 performance that is characterized by nudity or sexual conduct; or
- 22 (b) Shows, for any form of consideration, films, motion pictures, digital video
23 streams, slides, or other similar photographic reproductions characterized
24 by the depiction or description of sexual conduct or nudity;
- 25 (6) "Biological sex" means the physical condition of being male or female, as
26 determined by a person's sex chromosomes;
- 27 (7) "Child-care facility" means;

- 1 (a) Any child-care center that provides full-time or part-time care, day or night,
2 to four (4) or more children in a nonresidential setting who are not the
3 children, grandchildren, nieces, nephews, or in the legal custody of the
4 provider;
- 5 (b) A private home that is the primary residence of an individual who provides
6 full-time or part-time care, day or night, for six (6) or fewer children who
7 are not the children, siblings, stepchildren, grandchildren, nieces, nephews,
8 or in the legal custody of the provider;
- 9 (c) A facility that operates as an outside school hours center for youth who are
10 five (5) years of age or older; or
- 11 (d) A facility that is licensed by the Cabinet for Health and Family Services to
12 provide care or supervision for minor children;
- 13 (8) "Children's amusement establishment" means an amusement park, trampoline
14 park, inflatable play facility, laser tag facility, go kart track, skating park or
15 skating rink, video game arcade, or any commercial establishment primarily
16 dedicated to providing entertainment activities that cater to minors;
- 17 (9) "Drag performance" means a performance in which a performer sings, lip syncs,
18 dances, reads, or otherwise performs before an audience for entertainment while
19 exhibiting an exaggerated gender expression that is inconsistent with the
20 biological sex of the performer using clothing, makeup, or other physical
21 markers, and this expression is a caricatured, advertised, or featured aspect of the
22 performance taken as a whole;
- 23 (10) "Educational occupancy" means the occupancy or use of a building or structure
24 or any portion of a building or structure by persons assembled for the purpose of
25 learning or of receiving educational instruction and includes, whether private or
26 public in nature;
- 27 (a) Academies;

1 (b) Care centers;

2 (c) Colleges;

3 (d) Kindergartens;

4 (e) Libraries;

5 (f) Preschools;

6 (g) Relocatable classroom units;

7 (h) Schools;

8 (i) Seminaries; and

9 (j) Universities;

10 (11) "Harmful to minors" means that quality of any description, depiction, or
11 representation, in whatever form, of nudity, sexual conduct, sexual excitement, or
12 sadomasochistic abuse when it:

13 (a) Taken as a whole, appeals to the prurient interest of minors;

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

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

18 (12) "Lease" means a lease, lease-purchase, lease with option to purchase,
19 installment sale agreement, or other similar agreement;

20 (13) "Local government" has the same meaning as in KRS 45.237;

21 (14) "Minor" has the same meaning as in KRS 500.080;

22 (15) "Nude," "nudity," or "state of nudity" means:

23 (a) Showing of actual or simulated human male or female genitals, pubic area,
24 or buttocks with less than a fully opaque covering;

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

27 or

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

3 (16) "Obscene" has the same meaning as in KRS 531.010;

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

11 (18) "Place of worship" means a structure where persons regularly assemble for
12 worship, teaching, training, providing educational services, conducting religious
13 rituals, or other activities deemed necessary by a religious organization for the
14 exercise of religion; and

15 (19) "Sexual conduct" means:

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

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

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

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

27 (1) An adult-oriented business shall not be located within nine hundred thirty-three

1 (933) feet of a:

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

3 (b) Building with educational occupancy;

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

5 (d) Place of worship.

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

10 (3) For purposes of this section, the measurement required in subsections (1) and (2)
11 of this section shall be made in a straight line in all directions, without regard to
12 intervening structures or objects, from the nearest point on the property line or a
13 parcel containing an adult-oriented business to the nearest point on the property
14 line of a parcel containing any establishment identified in subsection (1) of this
15 section.

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

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

18 (b) No obscene, harmful to minors, or patently vulgar matter or performance,
19 sexually explicit drag performance, or visual representation of nudity or
20 sexual conduct is visible to minors.

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

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

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

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

- 1 2. Denial or refusal to renew a license or certificate of occupancy;
- 2 3. A cease and desist order;
- 3 4. All or any combination of the actions in subparagraphs 1., 2., and 3.
- 4 of this paragraph; or
- 5 5. Any other action deemed appropriate for the redress of the violation;
- 6 as determined by the issuing or governing authority.

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

11 (8) Any performance involving sexual conduct, a sexually explicit drag performance,
 12 or any other activity that would cause a business to be classified as an adult-
 13 oriented business as defined in Section 2 of this Act shall be prohibited on the
 14 premises or any property owned, leased, or operated by the Commonwealth or
 15 any of its political subdivisions.

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

18 (1) The Attorney General, a Commonwealth's attorney, a county attorney, or a
 19 resident of the county who has reason to believe that an adult-oriented business is
 20 operating in violation of Section 3 of this Act may bring a civil cause of action
 21 against the business. The action shall be brought in the Circuit Court of the
 22 county in which the violation occurred.

23 (2) If the court finds by a preponderance of the evidence that the defendant violated
 24 Section 3 of this Act, the remedies available to the plaintiff shall include:

- 25 (a) Declaratory relief;
- 26 (b) Temporary or permanent injunctive relief to enjoin the defendant from
- 27 continuing the violation or violations;

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

2 (d) Reasonable attorney's fees and costs; and

3 (e) Any other appropriate relief.

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

8 (4) Any adult-oriented business that knowingly violated any provision of Section 3 of
9 this Act may be subject to suspension or termination of its license to sell alcoholic
10 beverages under KRS Chapter 243, any other statute or local ordinance of the
11 Commonwealth or political subdivision of the Commonwealth, or by the
12 Department of Alcoholic Beverage Control.

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

15 (1) A commercial establishment that was lawfully established and legally operating
16 as an adult-oriented business before the effective date of this Act may continue
17 operating as an adult-oriented business in a location that does not conform to the
18 requirements of Section 3 of this Act until the expiration of its current lease
19 agreement, or no later than five (5) years from the effective date of this Act,
20 whichever occurs first, in order to make a reasonable recoupment of its
21 investment in the location.

22 (2) No later than five (5) years from the effective date of this Act, a commercial
23 establishment that was lawfully established and legally operated as an adult-
24 oriented business before the effective date of this Act shall comply with the
25 requirements of Section 3 of this Act.

26 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 231 IS CREATED TO
27 READ AS FOLLOWS:

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

7 (2) Nothing in Sections 1 to 6 of this Act shall preempt any ordinance, resolution, or
8 regulation of any local government that is at least as restrictive as the
9 requirements established under Section 3 of this Act.

10 ➔Section 7. Whereas the health, safety, and general welfare of minors and other
11 citizens of this Commonwealth are of the highest importance, an emergency is declared
12 to exist, and this Act takes effect upon its passage and approval by the Governor or upon
13 its otherwise becoming a law.