

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 matter as defined in KRS*
17 *531.010.*

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

19 *(a) Adult-oriented businesses are associated with a wide variety of adverse*
20 *secondary effects, including crimes against persons and property, human*
21 *trafficking, prostitution, potential spread of disease, lewdness, public*
22 *indecentcy, vulgarity, weakening of public morality, obscenity, illicit drug*
23 *use and drug trafficking, and sexual assault and exploitation;*

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

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

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

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

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

- 1 videocassettes, reproductions, slides, or other visual representations that
2 depict or describe sexual conduct or nudity; or
- 3 (c) Instruments, devices, or paraphernalia that are designed for use in
4 connection with sexual conduct;
- 5 (3) "Adult cabaret" means any nightclub, bar, restaurant, or other similar
6 commercial establishment that regularly features a:
- 7 (a) Person who appears in a state of nudity;
8 (b) Live performance that is characterized by nudity or sexual conduct;
9 (c) Film, motion picture, digital video stream, videocassette, slide, or other
10 similar photographic reproduction that is characterized by the depiction or
11 description of sexual conduct or nudity; or
- 12 (d) Performance with explicitly sexual conduct in which a performer sings, lip
13 syncs, dances, reads, or otherwise performs before an audience for
14 entertainment while exhibiting an exaggerated gender expression that is
15 inconsistent with the biological sex of the performer using clothing,
16 makeup, or other physical markers, and this expression is a caricatured,
17 advertised, or featured aspect of the performance taken as a whole;
- 18 (4) "Adult-oriented business" means an adult arcade, adult bookstore or video store,
19 adult cabaret, adult theater, or any establishment that regularly hosts any
20 performance involving sexual conduct;
- 21 (5) "Adult theater" means a theater, concert hall, auditorium, motion picture
22 theater, or other commercial establishment that predominantly:
- 23 (a) Features a person who appears in a state of nudity or who engages in a live
24 performance that is characterized by nudity or sexual conduct; or
- 25 (b) Shows, for any form of consideration, films, motion pictures, digital video
26 streams, slides, or other similar photographic reproductions characterized
27 by the depiction or description of sexual conduct or nudity;

- 1 (6) "Biological sex" means being male or female, as determined by a person's sex
2 chromosomes;
- 3 (7) "Child-care facility" means;
- 4 (a) Any child-care center that provides full-time or part-time care, day or night,
5 to four (4) or more children in a nonresidential setting who are not the
6 children, grandchildren, nieces, nephews, or in the legal custody of the
7 provider;
- 8 (b) A private home that is the primary residence of an individual who provides
9 full-time or part-time care at this residence, day or night, for six (6) or fewer
10 children who are not the children, siblings, stepchildren, grandchildren,
11 nieces, nephews, or in the legal custody of the provider;
- 12 (c) A facility that operates as an outside school hours center for youth who are
13 five (5) years of age or older; or
- 14 (d) A facility that is licensed by the Cabinet for Health and Family Services to
15 provide care or supervision for minor children;
- 16 (8) "Children's amusement establishment" means an amusement park, trampoline
17 park, inflatable play facility, laser tag facility, go kart track, skating park or
18 skating rink, video game arcade, or any commercial establishment primarily
19 dedicated to providing entertainment activities that cater to minors;
- 20 (9) "Educational occupancy" means the occupancy or use of a building or structure
21 or any portion of a building or structure by persons assembled for the purpose of
22 learning or of receiving educational instruction and includes, whether private or
23 public in nature;
- 24 (a) Academies;
- 25 (b) Care centers;
- 26 (c) Kindergartens;
- 27 (d) Libraries;

1 (e) Preschools;

2 (f) Relocatable classroom units;

3 (g) Schools; and

4 (h) Seminaries;

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

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

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

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

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

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

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

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

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

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

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

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

26 (16) "Park," "recreational area," or "recreational facility" means any land or facility
27 that has been designed for recreational activities and is open for use by minors,

1 including but not limited to playgrounds, nature trails, swimming pools,
2 reservoirs, wilderness areas, YMCA or YWCA facilities, and both indoor and
3 outdoor athletic courts and fields commonly used for youth sport activities, that
4 are under the operation or management of a private entity, the Commonwealth,
5 or any of its political subdivisions;

6 (17) "Place of worship" means a structure where persons regularly assemble for
7 worship, teaching, training, providing educational services, conducting religious
8 rituals, or other activities deemed necessary by a religious organization for the
9 exercise of religion; and

10 (18) "Sexual conduct" means:

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

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

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

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

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

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

25 (b) Building with educational occupancy;

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

27 (d) Place of worship.

- 1 (2) A business that is not an adult-oriented business shall not conduct business
2 activities that cause it to become an adult-oriented business while located within
3 nine hundred thirty-three (933) feet of any establishment set out under subsection
4 (1) of this section.
- 5 (3) For purposes of this section, the measurement required in subsections (1) and (2)
6 of this section shall be made in a straight line in all directions, without regard to
7 intervening structures or objects, from the nearest point on the property line or a
8 parcel containing an adult-oriented business to the nearest point on the property
9 line of a parcel containing any establishment identified in subsection (1) of this
10 section.
- 11 (4) An adult-oriented business shall ensure that:
- 12 (a) No minor gains access to the premises; and
13 (b) No obscene, harmful to minors, or patently vulgar matter or performance,
14 performance with explicitly sexual conduct, or visual representation of
15 nudity or sexual conduct is visible to minors.
- 16 (5) An adult-oriented business shall not employ any person under the age of eighteen
17 (18) years.
- 18 (6) (a) It shall be unlawful for a person to knowingly allow a minor to enter or
19 remain on or near the premises of an adult-oriented business.
- 20 (b) Any adult-oriented business that violates this subsection shall be subject to:
- 21 1. Suspension or revocation of any business license, license to sell
22 alcoholic beverages, or certificate of occupancy;
23 2. Denial or refusal to renew a license or certificate of occupancy;
24 3. A cease and desist order; or
25 4. All or any combination of the actions in subparagraphs 1., 2., and 3.
26 of this paragraph;
27 as determined by the issuing or governing authority.

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

5 (8) Any performance involving sexual conduct, any performance with explicitly
6 sexual conduct, or any other activity that would cause a business to be classified
7 as an adult-oriented business as defined in Section 2 of this Act shall be
8 prohibited on the premises or any property owned, leased, or operated by the
9 Commonwealth or any of its political subdivisions.

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

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

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

19 (a) Declaratory relief;

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

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

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

24 (e) Any other appropriate relief.

25 (3) The remedies and penalties provided under this section are supplemental to those
26 provisions of any local, state, and federal criminal and civil law which impose
27 prohibitions or provide penalties, sanctions, or remedies against the same

1 conduct prohibited by Section 3 of this Act or for violations of this section.

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

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

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

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

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

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

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