

1 AN ACT relating to adult-oriented businesses.

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, trafficking, 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 adult-oriented businesses and to prevent an
2 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; and
5 (d) Each negative secondary effect described in this section constitutes a harm
6 which the Commonwealth has a substantial government interest in
7 preventing and abating. The Commonwealth's interest in regulating adult-
8 oriented businesses extends to preventing future secondary effects of both
9 current and future adult-oriented businesses that may locate in the state.

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

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

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

16 (a) Coin-operated or slug-operated; or

17 (b) Electronically, electrically, or mechanically controlled; and

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

20 (2) "Adult bookstore or video store" means a commercial establishment that offers
21 for sale, viewing, or rental any of the following as one (1) of its principal business
22 purposes:

23 (a) A book, magazine, periodical, or other printed matter that depicts or
24 describes sexual conduct or nudity;

25 (b) A photograph, film, motion picture, digital video or audio stream,
26 videocassette, reproduction, slide, or other visual representation that depicts
27 or describes sexual conduct or nudity; or

- 1 (c) An instrument, device, or paraphernalia that is designed for use in
2 connection with sexual conduct;
- 3 (3) "Adult cabaret" means any nightclub, bar, restaurant, or other similar
4 commercial establishment that regularly features a:
- 5 (a) Person who appears in a state of nudity or is semi-nude;
6 (b) Live performance that is characterized by nudity or sexual conduct; or
7 (c) Film, motion picture, digital video stream, videocassette, slide, or other
8 similar photographic reproduction that is characterized by the depiction or
9 description of sexual conduct or nudity;
- 10 (4) "Adult live entertainment establishment" means an establishment that features
11 either a:
- 12 (a) Person who appears in a state of nudity; or
13 (b) Live performance that is characterized by nudity or sexual conduct;
- 14 (5) "Adult motion picture theater" means a commercial establishment in which a
15 film, motion picture, digital video stream, videocassette, slide, or other similar
16 photographic reproduction characterized by the depiction or description of sexual
17 conduct or nudity is predominantly shown for any form of consideration;
- 18 (6) "Adult-oriented business" means an adult arcade, adult bookstore or video store,
19 adult live entertainment establishment, adult motion picture theater, adult
20 theater, massage parlor that offers adult services, establishment that hosts drag
21 performances or stripping, escort agency, or nude model studio;
- 22 (7) "Adult theater" means a theater, a concert hall, an auditorium, or a similar
23 commercial establishment that predominantly features a person who appears in a
24 state of nudity or who engages in a live performance that is characterized by
25 nudity or sexual conduct;
- 26 (8) "Biological sex" means the physical condition of being male or female, as
27 determined by a person's unambiguous internal and external genitalia or, if

1 necessary, sex chromosomes present at birth, and formally recognized on the
2 person's original birth certificate;

3 (9) "Child-care facility" means a facility that is licensed by the Cabinet for Health
4 and Family Services to provide care or supervision for minor children;

5 (10) "Children's amusement establishment" means an amusement park, trampoline
6 park, inflatable play facility, laser tag facility, go-kart track, skating park or
7 skating rink, video game arcade, or any commercial establishment primarily
8 dedicated to providing entertainment activities that cater to minors;

9 (11) "Distribute" means to transfer possession of or provide access to other persons
10 for observation, as might occur with matter in a common library, a performance,
11 or a digital streaming service, with or without consideration;

12 (12) "Drag performance" means a performance in which a performer sings, lip syncs,
13 dances, reads, or otherwise performs before an audience for entertainment while
14 exhibiting a gender expression that is inconsistent with the biological sex
15 formally recognized on the performer's original birth certificate using clothing,
16 makeup, or other physical markers, and this gender expression is a caricatured,
17 advertised, or featured aspect of the performance taken as a whole;

18 (13) "Escort" means a person who:

19 (a) Agrees or offers to act as a date for another person for consideration; or

20 (b) Agrees or offers to privately model lingerie or privately perform a striptease
21 for another person;

22 (14) "Escort agency" means a person or business association that furnishes, offers to
23 furnish, or advertises the furnishing of an escort as one (1) of its primary
24 business purposes for any fee, tip, or other consideration;

25 (15) "Floor space" means the floor area inside an establishment that is visible or
26 accessible to patrons for any reason, excluding restrooms. The term includes
27 aisles, walkways used for access or display, and cashier stations where items are

1 displayed, viewed, sold, or rented;

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

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

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

8 (c) Taken as a whole, lacks serious literary, artistic, political, or scientific
9 values for minors;

10 (17) "Influential interest" means the actual power to control or influence the
11 operation, management, or policies of a business or legal entity which operates
12 the business and includes an individual who:

13 (a) Is the onsite manager of the business;

14 (b) Owns a financial interest of thirty percent (30%) or more of a business or
15 any class of voting securities of a business; or

16 (c) Is an officer in a legal entity that operates the business;

17 (18) "Local unit of government" means any city, county, urban-county government,
18 charter county government, consolidated local government, or unified local
19 government;

20 (19) "Massage parlor that offers adult services" means an establishment that offers
21 massage services characterized by an emphasis on sexual conduct or nudity;

22 (20) "Minor" or "minor child" means a person who has not reached the age of
23 eighteen (18);

24 (21) "Nude," "nudity," or "state of nudity" means:

25 (a) Showing of the human male or female genitals, pubic area, or buttocks with
26 less than a fully opaque covering;

27 (b) Showing the female breast with less than a fully opaque covering of any

1 portion below the top of the areola; or

2 (c) Depiction of covered male genitals in a discernibly turgid state;

3 (22) "Nude model studio" means a place where a person in a state of nudity is
4 observed, sketched, drawn, painted, sculpted, photographed, or otherwise depicted
5 by another person for money or other consideration. "Nude model studio" shall
6 not include a:

7 (a) Proprietary or private postsecondary institution that is licensed in this state;

8 (b) Public postsecondary education institution; or

9 (c) Structure containing an establishment for which:

10 1. A sign is not visible from the exterior of the structure and no other
11 advertising appears indicating that a nude person is available for
12 viewing;

13 2. Any person participating in a class has registered at least three (3)
14 days in advance of the class; and

15 3. No more than one (1) nude or semi-nude model is on the premises at a
16 time;

17 (23) "Obscene" means:

18 (a) To the average person, applying contemporary community standards, the
19 predominant appeal of the matter or performance, taken as a whole, is to
20 the prurient interest in nudity, sexual conduct, excretion, sexual
21 stimulation, or sexual gratification;

22 (b) The matter or performance depicts or describes the nudity, sexual conduct,
23 excretion, sexual stimulation, or sexual gratification in a patently offensive
24 way; and

25 (c) The matter or performance, taken as a whole, lacks serious literary, artistic,
26 political, or scientific value;

27 (24) "Obscene imagery representing minors" means a visual depiction of any kind

1 produced by any means, including but not limited to a drawing, cartoon,
2 sculpture, or painting that:

3 (a) 1. Depicts a minor engaging in sexual conduct; and

4 2. Is obscene; or

5 (b) 1. Depicts an image that is or appears to be a minor engaging in graphic
6 bestiality, sadomasochistic abuse, sexual intercourse, or deviate sexual
7 intercourse; and

8 2. Lacks serious literary, artistic, political, or scientific value;

9 (25) "Park" means any area primarily intended for recreational use that is dedicated
10 or designated by any federal, state, or local unit of government, local agency or
11 entity, special district, or any private individual, business, or group, including any
12 land owned, leased, reserved, or held open to the public for use as a park;

13 (26) "Performance" means any physical human bodily activity, whether
14 photographic, animated, live, or recorded, that is intended for an audience of one
15 (1) or more persons, including:

16 (a) Singing, dancing, speaking, acting, simulating, or pantomiming; or

17 (b) A play, motion picture, exhibition, or presentation;

18 (27) "Place of worship" means a structure where persons regularly assemble for
19 worship, ceremonies, rituals, and education relating to a particular form of
20 religious belief and which a reasonable person would conclude is a place of
21 worship by reason of design, signs, or architectural features;

22 (28) "Playground" means any:

23 (a) Public park or outdoor recreational area with play equipment installed and
24 designed to be used by children; and

25 (b) Outdoor recreational area with play equipment installed that is owned and
26 operated by a charitable organization or business;

27 (29) "Public library" means a:

- 1 (a) Library which is established as the countywide library system by any of the
2 methods provided by KRS Chapter 173;
- 3 (b) Library established by a city of the first class under KRS 173.030;
- 4 (c) Regional library established under KRS 173.320;
- 5 (d) City library established under KRS 82.082 or other means; and
- 6 (e) County library established under KRS 67.083 or other means;
- 7 (30) "Principal place of business" with respect to an adult bookstore or video store
8 means:
- 9 (a) At least twenty percent (20%) of the establishment's displayed merchandise
10 consists of:
- 11 1. Books, magazines, periodicals, or other printed matter; or
- 12 2. Photographs, drawings, films, motion pictures, video cassettes,
13 compact discs, digital video or audio streams, digital video discs,
14 slides, or other visual representations;
- 15 (b) At least twenty percent (20%) of the establishment's revenues derive from
16 the sale or rental, for any form of consideration, of:
- 17 1. Books, magazines, periodicals, or other printed matter;
- 18 2. Photographs, drawings, films, motion pictures, video cassettes,
19 compact discs, digital video or audio streams, digital video discs,
20 slides, other visual representations;
- 21 (c) The establishment maintains either at least five hundred (500) square feet
22 or twenty percent (20%) of its floor space for the display, viewing, sale, or
23 rental of:
- 24 1. Books, magazines, periodicals, or other printed matter; or
- 25 2. Photographs, films, motion pictures, video cassettes, compact discs,
26 digital video or audio streams, digital video discs, slides, or other
27 visual representations; or

1 (d) The establishment regularly offers for display, viewing, sale, or rental at
2 least one hundred (100):

3 1. Books, magazines, periodicals, or other printed matter; or

4 2. Photographs, drawings, films, motion pictures, video cassettes,
5 compact discs, digital video or audio streams, digital video discs,
6 slides, or other visual presentations;

7 all of which are characterized by their emphasis upon the display of sexual
8 conduct or nudity;

9 (31) "Recreational area or facility" means an area or facility open to the public for
10 recreational purposes;

11 (32) "Residence" means a permanent dwelling place;

12 (33) "School" means a public or private elementary, secondary, public charter, or
13 public or private postsecondary educational institution;

14 (34) "Semi-nude" means a state of dress for which clothing covers no more than the
15 genitals, the pubic region, and a female breast below a point immediately above
16 the top of the areola, as well as portions of the body that are covered by
17 supporting straps or devices;

18 (35) "Sexual conduct" means:

19 (a) A sex act, actual or simulated, including an act of human masturbation,
20 bestiality, flagellation, excretion for the purpose of sexual stimulation or
21 gratification, sexual intercourse as defined in KRS 510.010, or deviate
22 sexual intercourse as defined in KRS 510.010; or

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

25 (36) "Stripping" means any act which involves the intentional removal or simulated
26 removal of clothing in a sexual manner, or intentional nudity, for the
27 entertainment of one (1) or more individuals; and

1 (37) "Walking trail" means a pedestrian trail or path primarily used for walking but
2 also for cycling or other activities.

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

5 (1) An adult-oriented business shall not be located within one thousand (1,000) feet
6 of a:

7 (a) Child-care facility;

8 (b) Children's amusement establishment;

9 (c) YMCA or YWCA facility;

10 (d) Youth sports facility;

11 (e) Public swimming pool;

12 (f) Park;

13 (g) Place of worship;

14 (h) Playground;

15 (i) Public library;

16 (j) Recreational area or facility;

17 (k) Residence;

18 (l) School; or

19 (m) Walking trail.

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 one thousand (1,000) feet of any establishment set out under subsection (1) of
23 this section.

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

1 a parcel containing any establishment set out under subsection (1) of this section.
2 (4) An adult-oriented business operating in conformity with this section shall not be
3 in violation of this section if any establishment identified under subsection (1) of
4 this section subsequently locates within one thousand (1000) feet of the adult-
5 oriented business.

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

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

13 (2) (a) If the court finds by a preponderance of the evidence that a violation under
14 Section 3 of this Act has occurred, the court shall enjoin the defendant from
15 further violations. It shall not be required that the party seeking the relief
16 establish irreparable harm.

17 (b) If the court finds by a preponderance of the evidence that the defendant
18 knowingly, intentionally, or recklessly violated Section 3 of this Act, the
19 court shall award to the plaintiff liquidated damages in the amount of seven
20 thousand five hundred dollars (\$7,500) for each day of the violation.

21 (c) If the court issues a restraining order or injunction under paragraph (a) of
22 this subsection, and finds by a preponderance of the evidence that the
23 enjoined defendant has knowingly, intentionally, or recklessly violated the
24 terms of the court's order, the court shall order the defendant to pay to the
25 plaintiff liquidated damages in the amount of fifteen thousand dollars
26 (\$15,000) for each day of the violation.

27 (3) Upon a finding by the court of a violation of Section 3 of this Act or a violation of

1 any injunction issued under subsection (2) of this section, the plaintiff shall be
2 awarded actual damages, including investigation and prosecution expenses, the
3 costs of the action, reasonable attorney's fees, and all other proper relief to which
4 the plaintiff may be entitled.

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

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

11 (1) A commercial establishment that was lawfully established and legally operating
12 as an adult-oriented business before the effective date of this Act may continue
13 operating as an adult-oriented business in a location that does not conform to the
14 requirements of Section 3 of this Act until June 30, 2025, in order to make a
15 reasonable recoupment of its investment in the location that was made prior to
16 the effective date of this Act.

17 (2) On and after July 1, 2025, a commercial establishment that was lawfully
18 established and legally operated as an adult-oriented business before the effective
19 date of this Act shall comply with the requirements of Section 3 of this Act.

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

22 (1) A local governmental unit may continue to enforce any preexisting ordinance,
23 resolution, or regulation, and shall retain the authority to adopt any ordinance,
24 resolution, or regulation concerning the licensing, zoning, location, and
25 operation of adult-oriented businesses and similar adult-oriented enterprises
26 within the local governmental unit's jurisdiction in conformity with subsection
27 (2) of this section.

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