

HOUSE BILL No. 2138

By Committee on Taxation

2-5

1 AN ACT concerning sexually oriented businesses; relating to entry fees,
2 disposition of funds.

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

5 Section 1. As used in sections 1 through 4, and amendments thereto:

6 (a) "Nude" means:

7 (1) Entirely unclothed; or

8 (2) clothed in a manner that leaves uncovered or visible through less
9 than fully opaque clothing any portion of the breasts below the top of the
10 areola, if the person is female, or any portion of the genitals or buttocks.

11 (b) "Sexually oriented business" means a nightclub, bar, restaurant, or
12 similar commercial enterprise that:

13 (1) Provides for an audience of two or more individuals live nude
14 entertainment or live nude performances; and

15 (2) authorizes on-premises consumption of alcoholic liquor,
16 regardless of whether the consumption of alcoholic liquor is under a
17 license issued by the division of alcoholic beverage control.

18 Sec. 2. (a) The purpose of the fee on sexually oriented businesses is
19 in order to promote the health, safety and general welfare of the citizens of
20 Kansas and to mitigate the deleterious secondary effects of sexually
21 oriented businesses within the state. The provisions of this act have neither
22 the purpose nor intent of imposing a limitation or restriction on the content
23 or reasonable access to any communicative materials, including sexually
24 oriented materials. Similarly, it is neither the purpose nor intent of this act
25 to restrict or deny access by the distributors and exhibitors of sexually
26 oriented entertainment to their intended market. This fee is content neutral
27 and substantially unrelated to suppression of speech with its predominant
28 concern being the secondary negative impacts.

29 (b) A fee is imposed on a sexually oriented business in an amount
30 equal to \$5 for each entry by each customer admitted to the business.

31 (c) A sexually oriented business shall record daily in the manner
32 required by the secretary of revenue the number of customers admitted to
33 the business. The business shall maintain the records for the period
34 required by the secretary and shall make the records available for
35 inspection and audit upon request by the secretary.

36 (d) This section does not require a sexually oriented business to

1 impose a fee on a customer of the business. A business has discretion to
2 determine the manner in which the business derives the money required to
3 pay the fee imposed under this section.

4 Sec. 3. (a) The director of taxation shall administer the provisions of
5 this act. All sexually oriented businesses shall make all payments required
6 pursuant to section 2, and amendments thereto, to the director of taxation.
7 All such payments shall be accompanied by a return upon forms devised
8 and furnished by the director. The times for making returns and paying the
9 fee shall be the same as provided in K.S.A. 79-3607, and amendments
10 thereto.

11 (b) The fee imposed by this act shall be in addition to all other state
12 and local sales or excise taxes.

13 (c) The provisions of K.S.A. 79-3607, 79-3609, 79-3611, 79-3612,
14 79-3614, 79-3615, 79-3617 and 79-3643, and amendments thereto, and
15 related provisions that are a part of the Kansas retailers' sales tax act shall
16 have application to the fee prescribed in this act.

17 (d) The secretary of revenue shall adopt rules and regulations
18 necessary to administer and enforce the provisions of this act. Such rules
19 and regulations shall include, but not be limited to, standards for
20 determining whether a commercial establishment, business or operation is
21 a sexually oriented business.

22 Sec. 4. All amounts collected pursuant to this sections 2 and 3, and
23 amendments thereto, shall be remitted to the state treasurer in accordance
24 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
25 receipt of each such remittance, the state treasurer shall deposit the entire
26 amount in the state treasury to the credit of the family and children
27 investment fund, established by K.S.A. 38-1808, and amendments thereto.

28 Sec. 5. This act shall take effect and be in force from and after its
29 publication in the statute book.