

SENATE BILL No. 137

By Committee on Federal and State Affairs

2-11

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

3
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 as
16 defined in K.S.A. 41-102, and amendments thereto, regardless of whether
17 the consumption of alcoholic liquor is under a license issued by the
18 division of alcoholic beverage control.

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

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

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

1 (d) This section does not require a sexually oriented business to
2 impose a fee on a customer of the business. A business has discretion to
3 determine the manner in which the business derives the money required to
4 pay the fee imposed under this section.

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

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

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

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

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

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