

Talking Points: HB 2144 - KANSAS COMMUNITY DEFENSE ACT

1. Many states already have court tested statewide “Time, Place & Manner” restrictions in place to regulate sexually oriented businesses (SOBs) including Alabama, Georgia, Illinois, New Jersey, Ohio, Arizona and Pennsylvania.
2. Many Kansas communities do not have the funds or legal expertise to contend with the lengthy litigation that SOBs promise will follow if they attempt to adopt a local SOB ordinance. Such intimidation by this wealthy industry (more annual revenue than ABC, NBC & CBS combined) is sufficient to dissuade most cities and counties.
3. If a Kansas community does attempt to craft and enact an SOB ordinance they can find themselves in lengthy litigation like Dickinson County, Abilene Kansas. That case went on for five years. The case could have gone longer but the insurance company that represented Dickinson County was not inclined to throw what they estimated was another \$ 1 million at it and the community was weary of the struggle.
4. A state wide Kansas statute will be challenged but the outcome will more than likely follow a well worn path the courts have taken that comes down on the side of public safety and health. That precedent will reduce the number of city by city and county by county court cases **dramatically reducing court costs**.
5. Some Kansas communities choose not to have planning and zoning offices to reduce local government expense. This efficiency also leaves them venerable and with few remedies when faced with SOB issues. Kansas has many such communities.
6. For over 35 years Federal and State Courts have upheld the constitutional right of lawmakers to regulate SOB’s because of the “Negative Secondary Effects” these types of businesses have on communities. The leading negative secondary effects are increased crime, increased sexually transmitted diseases, general blight, decreased property values, increased drug trafficking, prostitution, etc... **These effects do not add value to communities but are costly and increasingly burdensome to taxpayers.**
7. SOB regulations put into place what is called TIME, PLACE and MANNER restrictions. Examples of the types of constitutional regulations that states can impose are; mandatory close of business at midnight till six a.m. ; a six foot standoff distance between dancers and patrons; a minimum light level inside the SOB; no private VIP rooms or booths; an employee of an SOB cannot have a criminal history, liquor restrictions, a distance of 1,000 feet from homes, churches, playgrounds, schools, day care centers, other SOB’s, total nudity ban, etc...
8. “Time” and “Manner” SOB regulations can be applied retroactively to existing SOBs as well as future SOBs. To do otherwise would unwisely guarantee an unregulated monopoly by existing SOBs.
9. Statewide “Place” restrictions are applied to future SOBs. “Place” restrictions could be further strengthened by local municipalities on existing SOBs.
10. THE ROLE OF ALCOHOL AT STRIP CLUBS; Proximity to alcohol is a key component of the criminological theory of secondary effects. Alcohol aggravates an SOB’s already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB’s patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this expectation in all respects. Predatory criminals prefer inebriated victims, and SOBs that serve alcohol or that are located near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards. Governments rely on this consistent finding of crime-related secondary effect studies as a rationale for limiting nudity in liquor serving businesses.

The following testimony is from Carolyn McKenzie, a friend and counselor to ex-dancers in Memphis, Tennessee. Read the seemingly hopeless situations that Carolyn encountered as she worked with girls to get them out of the adult entertainment industry:

- 18% of them were underage when they started stripping in clubs
- 90% were single moms trying to support their kids
- 75% of them had at least one sexually transmitted disease
- Half of them were high school drop-outs while only 25% of them had any job skills that were marketable
- 41% had a criminal history
- 95% were using drugs and alcohol

The other testimony is from David Sherman, a former Midwest manager for Déjà Vu strip bars. David tells a very similar story but from a different point of view. As a manager, he saw and experienced the following:

- 80% of the people involved in adult entertainment were involved in tax evasion and/or fraud
- 90% of the entertainers were involved in drug use and drug dealing
- 35% of the girls were involved in prostitution
- Underage entertainers were often employed
- Dancers conspired with patrons to commit other crimes such as drug dealing, prostitution, credit card fraud, and computer theft
- City employees received preferred treatment in exchange for lax law enforcement
- There were after-hour parties that included alcohol and drugs
- Counterfeit money was sometimes laundered
- In a cash flow business like this, money was illegally laundered for activities such as drug dealing
- And approximately 80% of all club owners were convicted felons

I believe these two testimonies represent a pattern that is consistent with the findings of numerous studies conducted by cities and evidence established in court cases. Two landmark cases handed down by the U. S. Supreme Court, *Renton v. Playtime, Inc.* in 1986 and *Young v. American Mini Theaters, Inc.* in 1976, recognized many of these problems and opened the door for citizens to take preventative measures in protecting themselves from the hazardous fallout of sexually oriented businesses.

HB 2144 “The Community Defense Act” Related Case Law and Land Use Studies

Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Kansas Legislature, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); *United States v. Evans*, 272 F.3d 1069 (8th Cir. 2002); *United States v. Mueller*, 663 F.2d 811 (8th Cir. 1981); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *United States v. Frederickson*, 846 F.2d 517 (1988); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.4d 1153 (9th Cir. 2003); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *World Wide Video of Washington, Inc. v. City of Spokane*, 386 F.3d 1186 (9th Cir. 2004); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Déjà Vu of Nashville, Inc. v. Metropolitan Gov’t of Nashville and Davidson County*, 274 F. 3d 377 (6th Cir. 2001); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Negative Secondary Effects of Sexually Oriented Businesses: Summaries of Key Reports; Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleary Expert Report - 2006; New York, New York Times Square - 1994; and the Report of the Attorney General’s Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

(1) Sexually oriented businesses, as a category of commercial enterprises, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the State has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the State’s rationale exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the State’s interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the State.