

SENATE BILL No. 493

By Committee on Judiciary

1-29

9 AN ACT concerning crimes and punishments; relating to smoking; cre-
10 ating the Kansas uniform smoking prohibition act; amending K.S.A.
11 21-4012 and 65-530 and repealing the existing sections.
12

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

14 New Section 1. The provisions of sections 1 through 8, and amend-
15 ments thereto, shall be known and may be cited as the Kansas uniform
16 smoking prohibition act.

17 New Sec. 2. As used in sections 1 through 8, and amendments
18 thereto, the following words and phrases shall have the following mean-
19 ings unless a different meaning clearly appears from the context:

20 (a) “Bar” means any indoor area that is operated and licensed pri-
21 marily for the sale and service of alcoholic beverages for on-premises
22 consumption.

23 (b) “Commercial motor vehicle” means a motor vehicle used on a
24 highway in interstate or intrastate commerce to transport property when
25 the vehicle:

26 (1) Has a gross weight rating, or gross vehicle weight or gross com-
27 bination weight of 10,001 pounds or more; and

28 (2) is not used in transporting material found by the United States
29 secretary of transportation to be hazardous under 49 U.S.C. 5103 and
30 transported in a quantity requiring placarding under regulations pre-
31 scribed by the United States secretary of transportation under 49 C.F.R.,
32 subtitle B, chapter I, subchapter C, and is subject to the provisions of 49
33 C.F.R. 397.13 as enacted on December 12, 1994.

34 (c) “Employee” means any person who is employed by an employer
35 in consideration for direct or indirect monetary wages or profit, and any
36 person who volunteers their services for a nonprofit entity.

37 (d) “Employer” means any person, partnership, corporation, associ-
38 ation or organization, including municipal or nonprofit entities, which
39 employs one or more individual persons.

40 (e) “Enclosed area” means all space between a floor and ceiling which
41 is enclosed on all sides by solid walls, windows or doorways which extend
42 from the floor to the ceiling, including all space therein screened by par-
43 titions which do not extend to the ceiling or are not solid or similar struc-

1 tures. For purposes of this section, the following shall not be considered
2 an “enclosed area”: (1) Rooms or areas, enclosed by walls, windows or
3 doorways, having neither a ceiling nor a roof and which are completely
4 open to the elements and weather at all times; and (2) rooms or areas,
5 enclosed by walls, windows or doorways and a roof or ceiling, having an
6 opening that is completely and permanently open to the elements and
7 weather and which comprises an area that is at least 20% of the total
8 perimeter wall area of such room or area.

9 (f) “Entryway” means the area within a 10 foot radius outside of any
10 doorway leading into a building or facility that is not exempted pursuant
11 to subsection (b) of K.S.A. 21-4010, and amendments thereto.

12 (g) “Food service establishment” means any place in which food is
13 served or is prepared for sale or service on the premises. Such term shall
14 include, but not be limited to, fixed or mobile restaurants, coffee shops,
15 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
16 shops, soda fountains, taverns, private clubs, roadside kitchens, commis-
17 saries and any other private, public or nonprofit organization or institution
18 routinely serving food and any other eating or drinking establishment or
19 operation where food is served or provided for the public with or without
20 charge.

21 (h) “Medical care facility” means a doctor’s office, general hospital,
22 special hospital, ambulatory surgery center or recuperation center, as de-
23 fined by K.S.A. 65-425, and amendments thereto, and any psychiatric
24 hospital licensed under K.S.A. 75-3307b, and amendments thereto.

25 (i) “Place of employment” means any enclosed area under the control
26 of a public or private employer, including, but not limited to, work areas,
27 auditoriums, elevators, private offices, employee lounges and restrooms,
28 conference and meeting rooms, classrooms, employee cafeterias, stair-
29 wells and hallways, that is used by employees during the course of em-
30 ployment. For purposes of this section, a private residence shall not be
31 considered a “place of employment” unless:

32 (1) Such residence is used as a day care home, as defined in K.S.A.
33 65-530, and amendments thereto; or

34 (2) such residence is also used for the operation of an in-home busi-
35 ness, and such business consists of an enclosed area that is a designated
36 work area which is accessible to the general public or which is occupied
37 by at least one employee on a full-time basis, and such employee is not
38 related to the owner of the business and has no ownership interest in the
39 residence.

40 (j) “Public building” means any building owned or operated by:

41 (1) The state, including any branch, department, agency, bureau,
42 commission, authority or other instrumentality thereof;

43 (2) any county, city, township, other political subdivision, including

1 any commission, authority, agency or instrumentality thereof; or
2 (3) any other separate corporate instrumentality or unit of the state
3 or any municipality.

4 (k) "Public meeting" means any meeting open to the public pursuant
5 to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of
6 this state.

7 (l) "Public place" means any enclosed areas open to the public or
8 used by the general public including, but not limited to: Banks, bars, food
9 service establishments, retail service establishments, retail stores, public
10 means of mass transportation, passenger elevators, health care institutions
11 or any other place where health care services are provided to the public,
12 medical care facilities, educational facilities, libraries, courtrooms, public
13 buildings, restrooms, grocery stores, school buses, museums, theaters,
14 auditoriums, arenas and recreational facilities. For purposes of this sec-
15 tion, a private residence shall not be considered a "public place" unless
16 such residence is used as a day care home, as defined in K.S.A. 65-530,
17 and amendments thereto.

18 (m) "Smoking" means possession of a lighted cigarette, cigar, pipe or
19 burning tobacco in any other form or device designed for the use of
20 tobacco.

21 New Sec. 3. (a) No person shall smoke in an enclosed area or at a
22 public meeting, including, but not limited to:

23 (1) Public places;

24 (2) taxicabs and limousines;

25 (3) restrooms, lobbies, hallways and other common areas in public
26 and private buildings, condominiums and other multiple-residential
27 facilities;

28 (4) restrooms, lobbies and other common areas in hotels and motels
29 and in at least 80% of the sleeping quarters within a hotel or motel that
30 may be rented to guests;

31 (5) entryways of all buildings and facilities not exempted pursuant to
32 subsection (b) of this section; and

33 (6) any place of employment.

34 (b) Each employer having a place of employment that is an enclosed
35 area shall provide a smoke-free workplace for all employees. Such em-
36 ployer shall also adopt and maintain a written smoking policy which shall
37 prohibit smoking without exception in all areas of the place of employ-
38 ment. Such policy shall be communicated to all current employees within
39 one week of its adoption and shall be communicated to all new employees
40 upon hiring. Each employer shall provide a written copy of the smoking
41 policy upon request to any current or prospective employee.

42 (c) The provisions of this section shall not apply to:

43 (1) The outdoor areas of any building or facility beyond 10 feet of

- 1 any entrance or exit to such building or facility;
- 2 (2) private homes, private residences, except when such home or res-
- 3 idence is used as a day care home, as defined in K.S.A. 65-530, and
- 4 amendments thereto;
- 5 (3) that portion of a place of employment as described in paragraph
- 6 (i)(2) of section 2, and amendments thereto, which is not used as a des-
- 7 ignated work area;
- 8 (4) a hotel or motel room designated for smoking guests if the total
- 9 percentage of such hotel or motel rooms in such hotel or motel does not
- 10 exceed 20%;
- 11 (5) private automobiles used primarily for personal use;
- 12 (6) freight trains; and
- 13 (7) commercial motor vehicles.

14 New Sec. 4. The proprietor or other person in charge of the premises
15 of a public place, or other area where smoking is prohibited, shall post
16 or cause to be posted in a conspicuous place signs displaying the inter-
17 national no smoking symbol and clearly stating that smoking is prohibited
18 by state law.

19 New Sec. 5. (a) It shall be unlawful for any person who owns, man-
20 ages, operates or otherwise controls the use of any public place, or other
21 area where smoking is prohibited, to fail to comply with all or any of the
22 provisions of sections 1 through 8, and amendments thereto.

23 (b) It shall be unlawful for any person who owns, manages, operates
24 or otherwise controls the use of any public place, or other area where
25 smoking is prohibited, to allow smoking to occur where prohibited by law.
26 Any such person shall be deemed to allow smoking to occur under this
27 subsection if such person:

- 28 (1) Has knowledge that smoking is occurring; or
- 29 (2) acquiesces to the smoking under the totality of the circumstances.
- 30 (c) It shall be unlawful for any person to smoke in any area where
- 31 smoking is prohibited by the provisions of section 3, and amendments
- 32 thereto.

33 New Sec. 6. Nothing in sections 1 through 8, and amendments
34 thereto, shall prevent any city or county from regulating smoking within
35 its boundaries, so long as such regulation is at least as stringent as that
36 imposed by sections 1 through 8, and amendments thereto. In such cases
37 the more stringent local regulation shall control to the extent of any in-
38 consistency between such regulation and sections 1 through 8, and
39 amendments thereto.

40 New Sec. 7. The provisions of K.S.A. 21-4009 through 21-4014, 21-
41 4016 and 21-4017, and amendments thereto, shall not apply in any county
42 which is subject to the Kansas uniform smoking prohibition act pursuant
43 to section 9, and amendments thereto.

1 New Sec. 8. If any provision of sections 1 through 8, and amend-
2 ments thereto, or the application thereof to any person, thing or circum-
3 stance is held invalid, such invalidity shall not affect the provision of ap-
4 plication of sections 1 through 8, and amendments thereto, that can be
5 given effect without the invalid provision or application, and to this end
6 the provisions of sections 1 through 8, and amendments thereto, are de-
7 clared to be severable.

8 New Sec. 9. (a) The board of county commissioners of each county
9 in the state by resolution shall submit to the qualified voters of the county
10 a proposition to make the county subject to the provisions of sections 1
11 through 8, and amendments thereto. The proposition shall be submitted
12 to the voters at a general election of the county held not more than 180
13 days after the effective date of this act.

14 (b) Upon the adoption of a resolution calling for an election pursuant
15 to subsection (a) or (f), the county election officer shall cause the follow-
16 ing proposition to be placed on the ballot at the general election: "Shall
17 _____ county be subject to the provisions of the Kansas uni-
18 form smoking prohibition act?"

19 (c) The election provided for by subsection (a) or (f) shall be con-
20 ducted, and the votes counted and canvassed, in the manner provided by
21 law for question submitted elections of the county.

22 (d) If a majority of the votes cast and counted at an election under
23 subsection (a) is in favor of making the county subject to the provisions
24 of the Kansas uniform smoking prohibition act, then on and after January
25 1, 2009, the county shall be subject to the provisions of sections 1 through
26 8, and amendments thereto.

27 (e) If a majority of the votes cast and counted at an election under
28 subsection (a) is against making the county subject to the provisions of
29 the Kansas uniform smoking prohibition act, the county shall not be sub-
30 ject to the provisions of sections 1 through 8, and amendments thereto,
31 except that such county shall still be subject to the provisions of subsection
32 (f) of this section and the provisions of K.S.A. 21-4009 through 21-4014,
33 21-4016 and 21-4017, and amendments thereto.

34 (f) In the event a majority of the votes cast and counted at an election
35 held pursuant to subsection (a) or this subsection is against making the
36 county subject to the provisions of the Kansas uniform smoking prohi-
37 bition act, the board of county commissioners may at any time after such
38 election by resolution submit to the qualified voters of the county a prop-
39 osition to make the county subject to the provisions of sections 1 through
40 8, and amendments thereto. The proposition shall be submitted to the
41 voters of the county at the next general election of the county which
42 follows adoption of the resolution by more than 90 days. If a majority of
43 the votes cast and counted at an election under this subsection is in favor

1 of making the county subject to the provisions of the Kansas uniform
2 smoking prohibition act, then on and after January 1 of the year imme-
3 diately following such election, the county shall be subject to the provi-
4 sions of sections 1 through 8, and amendments thereto. If a majority of
5 the votes cast and counted at an election under this subsection is against
6 making the county subject to the provisions of the Kansas uniform smok-
7 ing prohibition act, the county shall not be subject to the provisions of
8 sections 1 through 8, and amendments thereto, except that such county
9 shall still be subject to the provisions of this subsection and the provisions
10 of K.S.A. 21-4009 through 21-4014, 21-4016 and 21-4017, and amend-
11 ments thereto.

12 (g) No county shall be subject to the provisions of sections 1 through
13 8, and amendments thereto, until such county has elected to be subject
14 to the provisions of sections 1 through 8, and amendments thereto, pur-
15 suant to this section. At such time the county shall become subject to the
16 provisions of sections 1 through 8, and amendments thereto, on such date
17 as provided in subsection (d) or (f), whichever is applicable.

18 Sec. 10. K.S.A. 21-4012 is hereby amended to read as follows: 21-
19 4012. (a) Any person found guilty of smoking in violation of ~~this act~~ K.S.A.
20 21-4010, 21-4011, section 3 or section 4, and amendments thereto, is guilty
21 of a misdemeanor punishable by a fine of not more than \$20 for each
22 violation. ~~Any person found guilty of failing to post signs as required by~~
23 ~~this act, is guilty of a misdemeanor punishable by a fine of not more than~~
24 ~~\$50.:~~

25 (1) *Not exceeding \$100 for the first violation within a one-year period;*

26 (2) *not exceeding \$200 for a second violation within a one-year pe-*
27 *riod; or*

28 (3) *not exceeding \$500 for a third or subsequent violation within a*
29 *one-year period.*

30 *For purposes of this subsection, the number of violations within a one-*
31 *year period shall be measured by the date the violations occur.*

32 (b) *Each individual allowed to smoke by a person who owns, man-*
33 *ages, operates or otherwise controls the use of any public place, or other*
34 *area where smoking is prohibited, in violation of subsection (b) of section*
35 *5, and amendments thereto, shall be considered a separate violation for*
36 *the purposes of determining the number of violations under subsection*
37 *(a).*

38 (c) In addition, the department of health and environment, or local
39 department of health, may institute an action in any court of competent
40 jurisdiction to enjoin repeated violations of this act.

41 Sec. 11. K.S.A. 65-530 is hereby amended to read as follows: 65-530.

42 (a) As used in this section:

43 (1) "Day care home" means a day care home as defined under Kansas

1 administrative regulation 28-4-113, a group day care home as defined
2 under Kansas administrative regulation 28-4-113 and a family day care
3 home as defined under K.S.A. 65-517 and amendments thereto.

4 (2) "Smoking" means possession of a lighted cigarette, cigar, pipe or
5 burning tobacco in any other form or device designed for the use of
6 tobacco.

7 (b) Smoking within any room, enclosed area or other enclosed space
8 of a facility or facilities of a day care home during a time when children
9 who are not related by blood, marriage or legal adoption to the person
10 who maintains the home are being cared for, as part of the operation of
11 the day care home, within the facility or facilities is hereby prohibited.
12 Nothing in this subsection shall be construed to prohibit smoking on the
13 premises of the day care home outside the facility or facilities of a day
14 care home, including but not limited to porches, yards or garages.

15 (c) Each day care home registration certificate or license shall contain
16 a statement in bold print that smoking is prohibited within a room, en-
17 closed area or other enclosed space of the facility or facilities of the day
18 care home under the conditions specified in subsection (b). The state-
19 ment shall be phrased in substantially the same language as subsection
20 (b). The registration certificate or license shall be posted in a conspicuous
21 place in the facility or facilities.

22 (d) The secretary of health and environment may levy a civil fine
23 under K.S.A. 65-526 and amendments thereto against any day care home
24 for a first or second violation of this section. A third or subsequent vio-
25 lation shall be subject to the provisions of K.S.A. 65-523 and amendments
26 thereto.

27 (e) *In addition to any civil fine which may be levied pursuant to*
28 *subsection (d), any day care home that violates any provision of this sec-*
29 *tion may also be subject to criminal punishment pursuant to K.S.A. 21-*
30 *4012, and amendments thereto.*

31 Sec. 12. K.S.A. 21-4012 and 65-530 are hereby repealed.

32 Sec. 13. This act shall take effect and be in force from and after its
33 publication in the statute book.