

SENATE BILL No. 660

By Committee on Ways and Means

2-27

10 AN ACT concerning crimes and punishments; relating to smoking;
11 amending K.S.A. 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and
12 repealing the existing sections; also repealing K.S.A. 21-4016 and 21-
13 4017.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 21-4009 is hereby amended to read as follows: 21-
17 4009. As used in ~~this act~~ K.S.A. 21-4009 through 21-4014, and amend-
18 ments thereto:

19 (a) “Bar” means any indoor area that is operated and licensed for the
20 sale and service of alcoholic beverages, including alcoholic liquor as de-
21 fined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages
22 as defined in K.S.A. 41-2701, and amendments thereto, for on-premises
23 consumption.

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

27 (1) Has a gross weight rating, or gross vehicle weight or gross
28 combination weight of 10,001 pounds or more; and

29 (2) is not used in transporting material found by the United
30 States secretary of transportation to be hazardous under 49 U.S.C.
31 5103 and transported in a quantity requiring placarding under reg-
32 ulations prescribed by the United States secretary of transportation
33 under 49 C.F.R. subtitle B, chapter I, subchapter C, and is subject
34 to the provisions of 49 C.F.R. 397.13 as enacted on December 12,
35 1994.

36 ~~(b)~~ (c) “Employee” means any person who is employed by an em-
37 ployer in consideration for direct or indirect monetary wages or profit,
38 and any person who volunteers their services for a nonprofit entity.

39 ~~(c)~~ (d) “Employer” means any person, partnership, corporation, as-
40 sociation or organization, including municipal or nonprofit entities, which
41 employs one or more individual persons.

42 ~~(d)~~ (e) “Enclosed area” means all space between a floor and ceiling
43 which is enclosed on all sides by solid walls, windows or doorways which

1 extend from the floor to the ceiling, including all space therein screened
2 by partitions which do not extend to the ceiling or are not solid or similar
3 structures. For purposes of this section, the following shall not be consid-
4 ered an “enclosed area”: (1) Rooms or areas, enclosed by walls, windows
5 or doorways, having neither a ceiling nor a roof and which are completely
6 open to the elements and weather at all times; and (2) rooms or areas,
7 enclosed by walls, windows or doorways and a roof or ceiling, having an
8 opening that is completely and permanently open to the elements and
9 weather and which comprises an area that is at least 20% of the total
10 perimeter wall area of such room or area.

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

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

23 ~~(g)~~ **(h)** “Medical care facility” means a physician’s office, general hos-
24 pital, special hospital, ambulatory surgery center or recuperation center,
25 as defined by K.S.A. 65-425, and amendments thereto, and any psychi-
26 atric hospital licensed under K.S.A. 75-3307b, and amendments thereto.

27 ~~(h)~~ **(i)** “Place of employment” means any enclosed area under the
28 control of a public or private employer, including, but not limited to, work
29 areas, auditoriums, elevators, private offices, employee lounges and rest-
30 rooms, conference and meeting rooms, classrooms, employee cafeterias,
31 stairwells and hallways, that is used by employees during the course of
32 employment. For purposes of this section, a private residence shall not be
33 considered a “place of employment” unless such residence is used as a
34 day care home, as defined in K.S.A. 65-530, and amendments thereto.

35 ~~(i)~~ **(j)** “Public building” means any building owned or operated by:
36 (1) The state, including any branch, department, agency, bureau, com-
37 mission, authority or other instrumentality thereof; (2) any county, city,
38 township, other political subdivision, including any commission, author-
39 ity, agency or instrumentality thereof; or (3) any other separate corporate
40 instrumentality or unit of the state or any municipality.

41 ~~(j)~~ **(k)** “Public meeting” means any meeting open to the public pur-
42 suant to K.S.A. 75-4317 et seq., and amendments thereto, or any other
43 law of this state.

1 ~~(k)~~ **(l)** “Public place” means *any* enclosed ~~indoor~~ areas open to the
 2 public or used by the general public including, but not limited to: ~~Rest-~~
 3 ~~aurants~~ *Banks, bars, food service establishments, retail service establish-*
 4 *ments, retail stores, public means of mass transportation, passenger ele-*
 5 *vators, health care institutions or any other place where health care*
 6 *services are provided to the public, medical care facilities, educational*
 7 *facilities, libraries, courtrooms, state, county or municipal public build-*
 8 *ings, restrooms, grocery stores, school buses, museums, theaters, audi-*
 9 *toriums, arenas and recreational facilities. For purposes of this section, a*
 10 *private residence shall not be considered a “public place” unless such*
 11 *residence is used as a day care home, as defined in K.S.A. 65-530, and*
 12 *amendments thereto.*

13 ~~(b)~~ “Public meeting” includes all meetings open to the public.

14 ~~(c)~~ ~~(l)~~ **(m)** “Smoking” means possession of a lighted cigarette, cigar,
 15 pipe or ~~any other lighted smoking equipment~~ burning tobacco in *any*
 16 *other form or device designed for the use of tobacco.*

17 **(n)** **“Tobacco shop” means any indoor area operated primarily**
 18 **for the retail sale of tobacco, tobacco products or smoking devices**
 19 **or accessories.**

20 Sec. 2. K.S.A. 21-4010 is hereby amended to read as follows: 21-
 21 4010. (a) No person shall smoke in ~~a public place~~ *an enclosed area* or at
 22 a public meeting ~~except in designated smoking areas, including, but not~~
 23 *limited to:*

24 (1) *Public places;*

25 (2) *taxicabs and limousines;*

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

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

32 (5) *entryways of all buildings and facilities not exempted pursuant to*
 33 *subsection ~~(c)~~ (d); and*

34 (6) *any place of employment.*

35 ~~(b)~~ ~~Smoking areas may be designated by proprietors or other persons~~
 36 ~~in charge of public places, except in passenger elevators, school buses,~~
 37 ~~public means of mass transportation and any other place in which smoking~~
 38 ~~is prohibited by the fire marshal or by other law, ordinance or regulation.~~

39 ~~(c)~~ ~~Where smoking areas are designated, existing physical barriers~~
 40 ~~and ventilation systems shall be used to minimize the toxic effect of smoke~~
 41 ~~in adjacent nonsmoking areas.~~

42 (b) *Each employer having a place of employment that is an enclosed*
 43 *area shall provide a smoke-free workplace for all employees. Such em-*

1 ployer shall also adopt and maintain a written smoking policy which shall
 2 prohibit smoking without exception in all areas of the place of employ-
 3 ment. Such policy shall be communicated to all current employees within
 4 one week of its adoption and shall be communicated to all new employees
 5 upon hiring. Each employer shall provide a written copy of the smoking
 6 policy upon request to any current or prospective employee.

7 **(c) Notwithstanding any other provision of this section, K.S.A.**
 8 **21-4011 or 21-4012, and amendments thereto, the proprietor or**
 9 **other person in charge of an adult care home, as defined in K.S.A.**
 10 **39-923, and amendments thereto, may designate a portion of such**
 11 **adult care home as a smoking area, and smoking may be permitted**
 12 **within such designated smoking area.**

13 ~~(e)~~ **(d)** The provisions of this section shall not apply to:

14 (1) The outdoor areas of any building or facility beyond 10 feet of
 15 any entrance or exit to such building or facility;

16 (2) private homes or residences, except when such home or residence
 17 is used as a day care home, as defined in K.S.A. 65-530, and amendments
 18 thereto; ~~and~~

19 (3) a hotel or motel room rented to one or more guests if the total
 20 percentage of such hotel or motel rooms in such hotel or motel does not
 21 exceed 20%;

22 (4) **the main gaming floor of a lottery gaming facility, as defined**
 23 **in K.S.A. 74-8702, and amendments thereto, which is located in the**
 24 **southeast Kansas gaming zone, as defined in K.S.A. 74-8702, and**
 25 **amendments thereto;**

26 (5) **the Kansas veterans' home established by K.S.A. 76-1951,**
 27 **and amendments thereto, and the Kansas soldiers' home established**
 28 **by K.S.A. 76-1901, and amendments thereto;**

29 (6) **that portion of an adult care home, as defined in K.S.A. 39-**
 30 **923, and amendments thereto, that is expressly designated as a**
 31 **smoking area by the proprietor or other person in charge of such**
 32 **adult care home pursuant to subsection (c);**

33 (7) **tobacco shops; and**

34 (8) **commercial motor vehicles.**

35 Sec. 3. K.S.A. 21-4011 is hereby amended to read as follows: 21-
 36 4011. The proprietor or other person in charge of the premises of a public
 37 place, or other area where smoking is prohibited, shall post or cause to
 38 be posted in a conspicuous place signs *displaying the international no*
 39 *smoking symbol* and clearly stating that smoking is prohibited by state
 40 law. ~~The person in charge of the premises shall also post or cause to be~~
 41 ~~posted in any designated smoking area, signs stating that smoking is per-~~
 42 ~~mitted in such room or area. The proprietor or person in charge of the~~
 43 ~~public place shall have the authority to establish the percentage of area~~

1 in the public place which shall be posted and designated as a smoking
2 area.

3 Sec. 4. K.S.A. 21-4012 is hereby amended to read as follows: 21-
4 4012. ~~Any person found guilty of smoking in violation of this act is guilty~~
5 ~~of a misdemeanor punishable by a fine of not more than \$20 for each~~
6 ~~violation. Any person found guilty of failing to post signs as required by~~
7 ~~this act, is guilty of a misdemeanor punishable by a fine of not more than~~
8 ~~\$50. In addition, the department of health and environment, or local~~
9 ~~department of health, may institute an action in any court of competent~~
10 ~~jurisdiction to enjoin repeated violations of this act. (a) It shall be unlawful~~
11 ~~for any person who owns, manages, operates or otherwise controls the~~
12 ~~use of any public place, or other area where smoking is prohibited, to fail~~
13 ~~to comply with all or any of the provisions of K.S.A. 21-4009 through 21-~~
14 ~~4014, and amendments thereto.~~

15 (b) *It shall be unlawful for any person who owns, manages, operates*
16 *or otherwise controls the use of any public place, or other area where*
17 *smoking is prohibited, to allow smoking to occur where prohibited by law.*
18 *Any such person shall be deemed to allow smoking to occur under this*
19 *subsection if such person: (1) Has knowledge that smoking is occurring;*
20 *or (2) acquiesces to the smoking under the totality of the circumstances.*

21 (c) *It shall be unlawful for any person to smoke in any area where*
22 *smoking is prohibited by the provisions of K.S.A. 21-4010, and amend-*
23 *ments thereto.*

24 (d) *Any person who violates any provision of K.S.A. 21-4009 through*
25 *21-4014, and amendments thereto, shall be guilty of a misdemeanor pun-*
26 *ishable by a fine:*

- 27 (1) *Not exceeding \$100 for the first violation;*
28 (2) *not exceeding \$200 for a second violation within a one year period*
29 *after the first violation; or*
30 (3) *not exceeding \$500 for a third or subsequent violation within a*
31 *one year period after the first violation.*

32 *For purposes of this subsection, the number of violations within a year*
33 *shall be measured by the date the smoking violations occur.*

34 (e) *Each individual allowed to smoke by a person who owns, manages,*
35 *operates or otherwise controls the use of any public place, or other area*
36 *where smoking is prohibited, in violation of subsection (b) shall be con-*
37 *sidered a separate violation for purposes of determining the number of*
38 *violations under subsection (d).*

39 Sec. 5. K.S.A. 65-530 is hereby amended to read as follows: 65-530.

40 (a) As used in this section:

- 41 (1) "Day care home" means a day care home as defined under Kansas
42 administrative regulation 28-4-113, a group day care home as defined
43 under Kansas administrative regulation 28-4-113 and a family day care

1 home as defined under K.S.A. 65-517 and amendments thereto.

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

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

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

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

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

29 Sec. 6. K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4016, 21-
30 4017 and 65-530 are hereby repealed.

31 Sec. 7. This act shall take effect and be in force from and after its
32 publication in the statute book.