

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on February 22, 2008, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Others attending:

See attached list.

Final action on **SB 493—State-wide prohibition on smoking in indoor public areas** continued.

Senator Allen distributed a balloon amendment providing an exemption for certain sole proprietors of a business (Attachment 1).

Senator Allen moved, Senator Schmidt seconded, to adopt the balloon amendment provided by Senator Allen. Motion carried. Senator Lynn voted no and requested her vote recorded.

Senator Journey distributed a draft amendment recommended by the Restaurant and Hospitality Association which would provide exemptions for several businesses types including retail tobacco, private clubs, cigar bars, casinos, bingo-parlors, and fully-designated smoking restaurants and removing the county-by-county vote (Attachment 2). Senator Journey reviewed the changes and discussion followed.

Senator Journey moved, Senator Donovan seconded, to amend SB 493 as reflected in Senator Journey's draft amendment with a change to page 4 of the amendment, sub-section 15 which defines private club to read, "means a class A or a class B club". Motion failed.

Senator Journey distributed a balloon amendment in which bars would be exempted (Attachment 3).

Senator Journey moved, Senator Donovan seconded, to adopt the balloon amendment. Motion carried.

Senator Haley moved, Senator Schmidt seconded, to amend the definition of bar on page 1, lines 20-22 to use the definition of bar from Senator Journey's failed amendment (Attachment 2). Motion carried.

Senator Bruce distributed and explained a proposed balloon amendment relating to several exemptions (Attachment 4).

Senator Bruce moved, Senator Journey seconded, to adopt the proposed balloon amendment distributed by Senator Bruce. Motion carried.

Senator Journey distributed a balloon amendment in which exempt establishments with physical separate facility (Attachment 5).

Senator Journey moved, Senator Lynn seconded, to adopt the balloon amendment. Motion failed.

Senator Bruce moved, Senator Betts seconded, to amend SB 493 to allow the revisor license to insert language to prohibit minors in bingo parlors if smoking is allowed. Motion carried.

Senator Donovan moved, Senator Betts seconded, to modify the definition of cigar charity fund-raising event in the bill so that the entity conducting the fund-raising event does not have to be a 501(3)(c) but they must give net proceeds raised to a 501(c)(3). Motion carried.

The meeting adjourned at 10:35 A.M. The next scheduled meeting is February 25, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-22-08

NAME	REPRESENTING
Sturdy Jacquot	LKM
Whitney Damra	Hunt Oak, LLC
Reagan Cussimano	KHPA
Tracy Russell	KHPA
Nike Peacet	Xcaliber
David Kensingler	Penn National
Richard Klemf	Penn Nat'l
Tom Palace	PMCA OF KS
Dennis Koch	A T & T
Mary Joanne Hellebust	Tobaccofree Kansas Coalition
Linda Wilcoxon	American Heart Assn.
LISA BENLON	AMER. CANCER SOCIETY
SEAN MILLER	CAPITOL STRATEGIES
Travis Kelly	Myself
Charles D. Pomroy	citizen father & son of cigarette smoke victims
Curt Dabel	ICLPR
FATHER HETTER	HETTER FOUNDATION
RJ McGuire	Sea Journey - Intern

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-22-08

NAME	REPRESENTING
Deirdre Gorynski	KHLAC
DAVE HEIVEMANN	Am Com Ser.
Ginger Park	KDHE
Pat Woods	SRS
Jessica Wright	KDHE
Rebecca Price	K's Clubs & Assoc
Patricia R. Hubbell	Regis Assn.
Barb Conant	KDOA
Dodie Wellshear	K's Academy of Family Physicians
Mike Webb	Jud. Brewer
Ron Hein	Hein Law Firm, Chgo
Richard Somersley	Kenny & Assoc.

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-

Senate Judiciary
2-22-08
Attachment 1

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.

(4) any building which is owned by a sole proprietor and used as a place of
 employment, and which is only occupied by the sole proprietor and not by other
 employees, customers or other individuals;

and renumber the remaining paragraphs accordingly

SENATE BILL NO. _____

By

AN ACT enacting the Kansas nonsmoker protection act; repealing K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and 21-4014 and repealing the existing sections.

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

Section 1. (a) The provisions of this section shall be known and may be cited as the Kansas nonsmoker protection act.

(b) As used in this section:

(1) "Commercial motor vehicle" means a motor vehicle used on a highway in interstate or intrastate commerce to transport property when the vehicle:

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

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

(2) "Employee" means any person who performs any service on a full-time, part-time or contracted basis whether or not the person is denominated an employee, independent contractor or otherwise and whether or not the person is compensated or is a volunteer;

(3) "employer" means a person, business, partnership, association, the state of Kansas and its political subdivisions, corporation, including a municipal corporation, trust or nonprofit entity that

employs the services of one or more individual persons;

(4) "enclosed area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows, exclusive of doorways, which extend from the floor to the ceiling. "Enclosed area" includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means;

(5) "medical care facility" means a doctor's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto;

(6) "person" means an individual, partnership, corporation, limited liability company, entity, association, governmental subdivision or unit of a governmental subdivision or a public or private organization of any character;

(7) "physically separated" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows, exclusive of door or passageway, and independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas;

(8) "place of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including office buildings, work areas, auditoriums, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, stairs, elevators, health care facilities, private offices and vehicles owned and operated by the employer during working hours when the vehicle is occupied by more

than one person. A private residence or vehicle is not a "place of employment" unless it is used as a licensed child care, adult day care or medical care facility;

(9) "public place" means an enclosed area of any place which the public is invited or in which the public is permitted, including airports, banks, common areas of multi-family housing facilities, such as apartment buildings and condominiums, entertainment venues, medical care facilities, hotel and motel common areas, laundromats, public transportation facilities, reception areas, restaurants, retail food establishments, retail service establishments, retail stores, schools, shopping malls, sports facilities, theaters and waiting rooms. A private residence or vehicle is not a "public place" unless it is used as a licensed child care, adult day care or medical care facility, taxi or other commercial vehicle for hire;

(10) "retail tobacco store" means a retail store that derives its largest category of sales from tobacco products and accessories. "Retail tobacco store" does not include grocery stores, convenience stores, gas stations, general retailers or similar retail establishments;

(11) "smoking" means inhaling, exhaling, burning or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product;

(12) "sports facilities" means enclosed areas of sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard halls, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sporting events;

(13) "bar" means a legal age-restricted establishment that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns,

nightclubs, cocktail lounges and cabarets;

(14) "cigar bar" means an enclosed area that holds itself out to the public as a cigar bar, and in which:

- (A) Access is denied to any person under the legal age for the purchase or sale of tobacco;
- (B) cigars or tobacco products or both are sold for consumption on the premises; and
- (C) sales of cigars and all tobacco products and sales or rentals of cigar accessories account for not less than 5% of the annual gross revenues of the business; and

(15) "private club" means a class A club licensed pursuant to K.S.A. 41-2601 et seq., and amendments thereto.

(c) Smoking is prohibited in all public places and places of employment within the state of Kansas, except the following:

- (1) Private residences, except when used as a licensed child care, adult day care or medical care facility;
- (2) hotel and motel rooms that are rented to guests and are designated as smoking rooms;
- (3) retail tobacco stores that prohibit minors on the premises;
- (4) nonenclosed areas of public spaces, outdoor patios, as long as tobacco smoke is not reasonably expected to enter areas where smoking is prohibited;
- (5) bars;
- (6) cigar bars;
- (7) private clubs;
- (8) private automobiles, except when used for the public transportation of children or for transportation by a medical care facility or day care facility or when used as a taxi or other

commercial vehicle for hire;

(9) all premises of any manufacturer, importer or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities;

(10) physically separate smoking area or areas of a restaurant, if the owner chooses to provide such an area;

(11) a restaurant which has been designated by the owner as a totally smoking area, which complies with the notice provisions set out in subsection (f)(4);

(12) any casino or other establishment which operates class three games, as defined in the 1991 version of 25 U.S.C. 2703;

(13) a benefit cigar dinner for charitable purposes;

(14) any location or premises used to conduct bingo games under K.S.A. 79-4701 et seq., and amendments thereto;

(15) freight trains;

(16) commercial motor vehicles;

(17) an adult care home, as defined in K.S.A. 39-923, and amendments thereto, provided that it gives notice to potential residents and employees of its smoking policy prior to their admission or employment;

(18) any veterans administration hospital within the state;

(19) any Kansas soldiers' home established pursuant to K.S.A. 76-1901 et seq., and amendments thereto, or veterans' home established pursuant to K.S.A. 76-1951 et seq., and amendments thereto; and

(20) designated smoking areas in passenger trains.

(d) To protect the private property rights of all persons who own bars and retail tobacco stores in this state, the state of Kansas finds and determines a single statewide standard for smoking in enclosed areas that are also public places to be a matter of statewide concern. It is declared that this section preempts all municipal and county laws, charters, ordinances and rules and regulations relating to smoking in the locations set forth in subsection (b).

(e) Notwithstanding any other provision of this section, an owner, operator, manager or other person or entity in control of an establishment, facility or outdoor area may declare that entire establishment, facility or outdoor area as a nonsmoking place.

(f) Posting of signs and ashtray removal:

(1) "No smoking" signs or the international "no smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, no smaller than 6 inches by 6 inches, shall be clearly and conspicuously posted by the owner, operator, manager or other person in control of that place identifying where smoking is prohibited by this section and where complaints regarding violations may be registered;

(2) every public place and place of employment where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited;

(3) all ashtrays shall be removed from any premise where smoking is prohibited by this section by the owner, operator, manager or other person having control of the area; and

(4) restaurants which are designated as totally smoking as provided in subsection (c)(11) shall be conspicuously posted on the outside of the business "This business is a totally smoking facility. Persons entering are advised that smoking is permitted at all locations in this facility".

(g) No employer may discharge or retaliate against an employee because that employee

exercised any rights afforded by this section or reports or attempts to prosecute a violation of this section.

(h) An owner, manager, operator or employee of a place regulated by this section shall inform any person who is smoking in violation of this section that smoking is not allowed and request that the person stop smoking immediately.

(i) This section does not create any new private right of action nor does it extinguish any existing common law causes of action.

(j) Any person found guilty of smoking in violation of this section is guilty of a misdemeanor punishable by a fine of not less than \$50 and not more than \$300 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act.

(k) If any provision of this section or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions of application of this section that can be given effect without the invalid provision or application, and to this end the provisions of the section are declared to be severable.

Sec. 2. K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and 21-4014 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL No. 493

By Committee on Judiciary

1-29

Proposed Amendment
Senator Journey

Prepared by the Office of the Revisor of Statute
February 19, 2008

Senate Judiciary
2-22-08
Attachment 3

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

(j) "Private club" means a class A or B club licensed pursuant to K.
S.A. 41-2601 et seq., and amendments thereto;

Reletter remaining subsections accordingly

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~~ (6) private clubs;

13 ~~(7) commercial motor vehicles.~~ (7)

14 New Sec. 4. The proprietor or other person in charge of the premises (8)

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

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31 smoking is prohibited by the provisions of section 3, and amendments
32 thereto.

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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.

SENATE BILL No. 493

By Committee on Judiciary

1-29

Proposed Amendments
Senator Bruce

Prepared By:
The Office of the Revisor of Statutes
February 20, 2008

Senate Judiciary
2-22-08
Attachment 4

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.

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21 marily for the sale and service of alcoholic beverages for on-premises
22 consumption.

23 ~~44~~ "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 ~~45~~ "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 ~~46~~ "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 ~~47~~ "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-

(b) "Cigar bar" means any indoor area which is operated primarily for the on-site sale of tobacco products and the rental of on-site humidors and prohibits the entry of persons 18 years of age and under at all times.

And by relettering the remaining subsections accordingly;

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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 ~~††~~ "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 ~~††~~ "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.

(i) "Gaming facility" means a lottery gaming facility, as defined in K.S.A. 74-8702, and amendments thereto, or any location or premises used to conduct bingo games under K.S.A. 79-4701 et seq., and amendments thereto.

21 ~~††~~ "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.

And by relettering the remaining subsections accordingly;

25 ~~††~~ "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.

(1) "Private club" means a class A or B club licensed pursuant to K.S.A. 41-2601 et seq., and amendments thereto.

40 ~~††~~ "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

And by relettering the remaining subsections accordingly;

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 ~~4~~ "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 ~~4~~ "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 ~~4~~ "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

(q) "Tobacco shop" means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories.

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- 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 (1)(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; ~~and~~

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 5, 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 5, 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 5, 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 5, 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.

- | | |
|--|-------------------------|
| | ; |
| | (8) cigar bars; |
| | (9) bars; |
| | (10) tobacco shops; |
| | (11) private clubs; and |
| | (12) gaming facilities. |

SENATE BILL No. 493

By Committee on Judiciary

1-29

Proposed Amendment
Senator JourneyPrepared by the Office of the Revisor of Statutes
February 19, 2008

Senate Judiciary

2-22-08
Attachment 5

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-

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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.

(6) any location or premises used to conduct bingo games under K.S.A. 79-4701 et seq., and amendments thereto;

And by renumbering the remaining subsections accordingly