

SESSION OF 2009

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2221**

As Amended by Senate Committee of the Whole

**Brief\***

HB 2221, as amended, would amend current law concerning cigarette or tobacco infractions and the taxation and unlawful use of cigarette and tobacco products. Additionally, the bill would create the Kansas Indoor Clean Air Act for certain provisions in the bill.

The bill would ban smoking and make the act of smoking in the following places a cigarette or tobacco infraction:

- Public places;
- Taxicabs and limousines;
- Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
- Restrooms, lobbies, and other common areas in hotels and motels and in at least 80 percent of the guest sleeping quarters within a hotel or motel;
- Access points of all buildings and facilities unless the building or facility is exempted by the bill; and
- Any place of employment.

**Exemptions.** Buildings and facilities exempted from the

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

smoking ban would be those not defined as an enclosed area including: rooms or areas without a ceiling or a roof and completely open to the elements at all times, and rooms or areas with a ceiling or roof enclosed by walls, fences, windows, or doorways but which have an opening that is completely and permanently open to the elements and that comprises at least 30 percent of the total perimeter wall area of such room or area.

The following also would be exempted from the provisions of the bill:

- Outdoor areas of any building or facility beyond the access points of the building or facility;
- Private homes or residences, except when used as a day care home;
- Hotel or motel rooms designated for smoking guests if the percent of such rooms does not exceed 20 percent of the total hotel or motel rooms;
- The gaming floor of a lottery gaming facility or racetrack gaming facility;
- The portion of an adult care home that is designated as a smoking area and that is fully enclosed and ventilated;
- The portion of a licensed long-term care unit of a medical care facility that is designated as a smoking area and that is fully enclosed and ventilated;
- Tobacco shops;
- Class A and Class B clubs holding a license as of January 1, 2009, and who notify the Secretary of Health and Environment in writing within 90 days after the effective date of the bill that they wish to continue to allow smoking on the premises; and
- Private clubs which meet the following criteria:

- Are an outdoor recreational facility that is a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and is not open to the public;
- Have substantial dues or membership fee requirements for use of the facility which are proportional in cost to similarly-situated outdoor recreational facilities that are not considered nominal and have not been implemented to avoid or evade restrictions of a statewide ban on smoking; and
- Only permit smoking in designated areas where minors are not allowed.

The bill would define the access point for buildings and facilities as an area within a ten-foot radius outside of any doorway, open window or air intake leading into the building or facility that is not exempt from the smoking ban. A tobacco shop is defined as any indoor area operated primarily for the retail sale of tobacco, tobacco products, or smoking devices or accessories and which derives not less than 65 percent of its gross receipts from the sale of tobacco.

**Requirements.** The bill would require each employer having a place of employment that is an enclosed area to provide a smoke-free workplace; to adopt and maintain a written smoking policy that prohibits smoking without exception in the place of employment; to communicate the policy to all current employees within one week of its adoption and to new employees upon hiring; and to provide a copy of the policy to current or prospective employees upon request. Additionally, the proprietor or person in charge of a public place or other area where smoking is prohibited would be required to post in a conspicuous place signs displaying the international “no smoking” symbol and clearly stating that smoking is prohibited by state law.

**Unlawful acts and fines.** It would be unlawful for any

person who controls the use of any public place or other area where smoking is prohibited to fail to comply with all or any of the provisions set out in the bill or to allow smoking to occur where prohibited by law if they have knowledge that smoking is occurring and if they acquiesce to the smoking. It also would be unlawful for any person to smoke in an area where smoking is prohibited. Any person who violates the provisions of the bill would be guilty of a cigarette or tobacco infraction which is punishable by a fine.

The following fines would be established by the bill:

- Not to exceed \$100 for the first violation;
- Not to exceed \$200 for the second violation within a one year period of the first violation; and
- Not to exceed \$500 for the third or subsequent violation within a one year period after the first violation.

The number of violations within a year would be measured by the date the smoking violations occurs. Further, each individual allowed to smoke by the person who controls the use of any public place or other area where smoking is prohibited would be considered a separate violation for determining the number of violations that occurred.

***Other provisions.*** Employers would not be allowed to discharge, refuse to hire, or retaliate against an employee, applicant for employment, or customer if they report, or attempt to prosecute a violation of any of the provisions of the bill. In addition to the civil fines which now may be levied against any day care home found to be in violation, the bill also would allow day care homes to be subject to the fines for a tobacco or cigarette infraction.

The bill also would give the Director of Alcoholic Beverage Control the authority to promulgate rules and regulations to insure that any exemption from the statewide ban on smoking

is *bona fide* and the entity seeking such exemption is not inappropriately seeking to circumvent the smoking ban created under the bill.

***Additional Cigarette and Tobacco Products Provisions.*** The bill also would amend current law concerning the taxation and unlawful sale of cigarette and tobacco products. The bill would add the definition of a “self-service display” and a “tobacco specialty store.” A “self-service display” would be defined as a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer’s consumers, and from which such consumers can readily access the cigarettes or tobacco products without the assistance of a salesperson. A display case behind locked doors would not be defined as a self-service display. A “tobacco specialty store” would be defined as a dealer establishment that derives at least 75 percent of its revenue from cigarettes or tobacco products.

The bill would make it unlawful for an establishment to sell cigarettes or tobacco products by means of a self-service display, with the following two exceptions:

- The vending machine is located behind a counter or in some area of the establishment to which minors are prohibited by law from having access; is used in a commercial building or industrial plant where the public is not customarily admitted and the vending machine is intended for the sole use of adult employees; or the vending machine has a lock-out device which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine; or
- The self-service display is located in a tobacco specialty store.

The provisions of the bill concerning cigarette and tobacco products taxation and sales would become effective upon

publication in the statute book. The remainder of the bill's provisions would become effective January 2, 2010.

## **Background**

The Senate Committee on Public Health and Welfare amended HB 2221 by deleting the language of the bill as introduced and inserting the language of SB 25 as amended by the Senate Committee of the Whole. HB 2221, as introduced, would amend a statute regarding the disclosure of child care records to allow the Kansas Department of Health and Environment to release certain information to the public without specific permission from the licensee or registrant.

The Senate Committee of the Whole further amended HB 2221 by adding an exemption for private clubs (outdoor recreational facilities) as defined by the bill. The Senate Committee of the Whole also added language authorizing the Director of Alcoholic Beverage Control to promulgate rules and regulations to insure that any exemption from the statewide ban on smoking is *bona fide*.

SB 25 was introduced by the Committee at the request of Senator David Wysong. Proponents of the bill included representatives from the Kansas Department of Health and Environment; Kansas Health Policy Authority; American Association for Retired Persons; American Cancer Society; American College of Physicians; Riley County Medical Society; American Heart Association; American Lung Association; Blue Cross Blue Shield of Kansas; Brown Mackie College-Salina; Clean Air Kansas; Clean Air Emporia; Clean Air Topeka; Kansas Health Consumer Coalition; Kansas Faith Alliance for Health Reform; Greater Kansas City Chamber of Commerce; Manhattan Chamber of Commerce; Susan G. Komen for the Cure; Tobacco Free Kansas Coalition; University of Kansas School of Medicine-Kansas City; and a business owner and private citizens.

Written testimony in support of SB 25 was provided by

representatives from the American Heart Association's Go Red For Women Movement; Asthma, Allergy and Rheumatology Associates, PA.; Emporians for Drug Awareness; Kansas Academy of Family Physicians; Kansas Association of Homes and Services for the Aging; Kansas Hospital Association; Kansas Medical Society; Kansas for Nonsmokers Rights; Kansas Public Health Association, Inc.; Kansas Respiratory Care Society; Kansas State Nurses Association; Saline County Health Department; Tobacco Free Wichita Coalition; University of Kansas School of Medicine-Wichita; elected officials from Derby and Manhattan; and business owners and private citizens.

Neutral testimony was provided by a representative from the Kansas Health Institute.

Opponents of SB 25 included representatives from Americans for Prosperity; Armour Amusement; Cigar Chateau; Diebel's Sportsmens Gallery; Free State Business Rights Coalition; Kansas Licensed Beverage Association; Kansas Restaurant and Hospitality Association and Reynolds American Inc.; League of Kansas Municipalities; Walt's Bar; and business owners and private citizens.

Written testimony in opposition of SB 25 was provided by representatives from Conroy's Pub; Flint Oak, LLC and Flint Hills National Golf Club; Free State Business Rights Coalition; Twin City Tavern; WheatFields Bakery and Free State Brewery; and XIKAR.

The Senate Committee of the Whole amended SB 25 to include the language of SB 180 which would prohibit the sale of cigarettes and tobacco products in self-service displays, except in tobacco speciality stores. No fiscal note was available for SB 180 at the time of the Senate Committee of the Whole action. The fiscal note for SB 180, that was later made available, states that the Department of Revenue indicated SB 180 would require the issuance of notices to all cigarette and tobacco retailers and may require new or revised forms. The Department further stated it could be required to hire additional

staff to track and audit tobacco specialty stores, monitor the revenues of the stores and canvass the state to ensure that there are no self-service displays in retail outlets other than tobacco specialty stores. The additional costs to the Department could not be estimated. Any fiscal effect resulting from enactment of SB 180 is not accounted for in *The FY 2010 Governor's Budget Report*.

Additionally, the Senate Committee of the Whole exempted the gaming floor of lottery gaming and racetrack gaming facilities and Class A and B clubs, under certain circumstances, from the smoking ban provisions of the bill. The Committee of the Whole removed the Kansas Soldiers' Home from the list of facilities exempted from the smoking ban. The Committee also modified the definition of buildings and facilities exempt from the smoking ban and the definition of "access point."

The fiscal note on the introduced version of SB 25 prepared by the Division of the Budget states that the Kansas Department of Health and Environment indicated the bill would have no fiscal impact on its operations. The Department also indicated that it does not believe enforcement of the bill would have a discernable fiscal effect on local law enforcement. The Office of Judicial Administration indicated that the bill would have a fiscal impact but the impact could be accommodated within existing resources.