

HOUSE BILL No. 2219

By Representatives Garber, Carpenter, DeGraaf, Hawkins, Montgomery, O'Brien,
Peck, Rothlisberg, Rubin, Schwab and Seiwert

2-5

1 AN ACT concerning the Kansas indoor clean air act; relating to smoking
2 on certain premises; amending K.S.A. 2012 Supp. 21-6109 and 21-
3 6110 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 21-6109 is hereby amended to read as
7 follows: 21-6109. As used in K.S.A. 2012 Supp. 21-6109 through 21-6116,
8 and amendments thereto:

9 (a) "Access point" means the area within a ten foot radius outside of
10 any doorway, open window or air intake leading into a building or facility
11 that is not exempted pursuant to subsection (d) of K.S.A. 2012 Supp. 21-
12 6110, and amendments thereto.

13 (b) "Bar" means any indoor area that is operated and licensed for the
14 sale and service of alcoholic beverages, including alcoholic liquor as
15 defined in K.S.A. 41-102, and amendments thereto, or cereal malt
16 beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-
17 premises consumption.

18 (c) "Employee" means any person who is employed by an employer
19 in consideration for direct or indirect monetary wages or profit, and any
20 person who volunteers their services for a nonprofit entity.

21 (d) "Employer" means any person, partnership, corporation,
22 association or organization, including municipal or nonprofit entities,
23 which employs one or more individual persons.

24 (e) "Enclosed area" means all space between a floor and ceiling
25 which is enclosed on all sides by solid walls, windows or doorways which
26 extend from the floor to the ceiling, including all space therein screened by
27 partitions which do not extend to the ceiling or are not solid or similar
28 structures. For purposes of this section, the following shall not be
29 considered an "enclosed area": (1) Rooms or areas, enclosed by walls,
30 windows or doorways, having neither a ceiling nor a roof and which are
31 completely open to the elements and weather at all times; and (2) rooms or
32 areas, enclosed by walls, fences, windows or doorways and a roof or
33 ceiling, having openings that are permanently open to the elements and
34 weather and which comprise an area that is at least 30% of the total
35 perimeter wall area of such room or area.

1 (f) "Food service establishment" means any place in which food is
2 served or is prepared for sale or service on the premises. Such term shall
3 include, but not be limited to, fixed or mobile restaurants, coffee shops,
4 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
5 shops, soda fountains, taverns, private clubs, roadside kitchens,
6 commissaries and any other private, public or nonprofit organization or
7 institution routinely serving food and any other eating or drinking
8 establishment or operation where food is served or provided for the public
9 with or without charge.

10 (g) "Gaming floor" means the area of a lottery gaming facility or
11 racetrack gaming facility, as those terms are defined in K.S.A. 74-8702,
12 and amendments thereto, where patrons engage in Class III gaming. The
13 gaming floor shall not include any areas used for accounting, maintenance,
14 surveillance, security, administrative offices, storage, cash or cash
15 counting, records, food service, lodging or entertainment, except that the
16 gaming floor may include a bar where alcoholic beverages are served so
17 long as the bar is located entirely within the area where Class III gaming is
18 conducted.

19 (h) "Medical care facility" means a physician's office, general
20 hospital, special hospital, ambulatory surgery center or recuperation center,
21 as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric
22 hospital licensed under K.S.A. 75-3307b, and amendments thereto.

23 (i) "Outdoor recreational facility" means a hunting, fishing, shooting
24 or golf club, business or enterprise operated primarily for the benefit of its
25 owners, members and their guests and not normally open to the general
26 public.

27 (j) *"Private business" means any business where one or more persons*
28 *are employed or engaged in the purchase, sale, provision or*
29 *manufacturing of commodities, products or services, whether for profit or*
30 *not-for-profit, and which is not owned or controlled by any state or local*
31 *governmental entity.*

32 (k) "Place of employment" means any enclosed area under the control
33 of a public or private employer, including, but not limited to, work areas,
34 auditoriums, elevators, private offices, employee lounges and restrooms,
35 conference and meeting rooms, classrooms, employee cafeterias, stairwells
36 and hallways, that is used by employees during the course of employment.
37 For purposes of this section, a private residence shall not be considered a
38 "place of employment" unless such residence is used as a day care home,
39 as defined in K.S.A. 65-530, and amendments thereto.

40 ~~(l)~~ (l) "Private club" means an outdoor recreational facility operated
41 primarily for the use of its owners, members and their guests that in its
42 ordinary course of business is not open to the general public for which use
43 of its facilities has substantial dues or membership fee requirements for its

1 members.

2 ~~(h)~~ (m) "Public building" means any building owned or operated by:
3 (1) The state, including any branch, department, agency, bureau,
4 commission, authority or other instrumentality thereof; (2) any county,
5 city, township, other political subdivision, including any commission,
6 authority, agency or instrumentality thereof; or (3) any other separate
7 corporate instrumentality or unit of the state or any municipality.

8 ~~(m)~~ (n) "Public meeting" means any meeting open to the public
9 pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other
10 law of this state.

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

22 ~~(o)~~ (p) "Smoking" means possession of a lighted cigarette, cigar, pipe
23 or burning tobacco in any other form or device designed for the use of
24 tobacco.

25 ~~(p)~~ (q) "Tobacco shop" means any indoor area operated primarily for
26 the retail sale of tobacco, tobacco products or smoking devices or
27 accessories, and which derives not less than 65% of its gross receipts from
28 the sale of tobacco.

29 ~~(q)~~ (r) "Substantial dues or membership fee requirements" means
30 initiation costs, dues or fees proportional to the cost of membership in
31 similarly-situated outdoor recreational facilities that are not considered
32 nominal and implemented to otherwise avoid or evade restrictions of a
33 statewide ban on smoking.

34 Sec. 2. K.S.A. 2012 Supp. 21-6110 is hereby amended to read as
35 follows: 21-6110. (a) It shall be unlawful, with no requirement of a
36 culpable mental state, to smoke in an enclosed area or at a public meeting
37 including, but not limited to:

- 38 (1) Public places;
- 39 (2) taxicabs and limousines;
- 40 (3) restrooms, lobbies, hallways and other common areas in public
41 and private buildings, condominiums and other multiple-residential
42 facilities;
- 43 (4) restrooms, lobbies and other common areas in hotels and motels

1 and in at least 80% of the sleeping quarters within a hotel or motel that
2 may be rented to guests;

3 (5) access points of all buildings and facilities not exempted pursuant
4 to subsection (d); and

5 (6) any place of employment.

6 (b) Each employer having a place of employment that is an enclosed
7 area shall provide a smoke-free workplace for all employees. Such
8 employer shall also adopt and maintain a written smoking policy which
9 shall prohibit smoking without exception in all areas of the place of
10 employment. Such policy shall be communicated to all current employees
11 within one week of its adoption and shall be communicated to all new
12 employees upon hiring. Each employer shall provide a written copy of the
13 smoking policy upon request to any current or prospective employee.

14 (c) Notwithstanding any other provision of this section, K.S.A. 2012
15 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other
16 person in charge of an adult care home, as defined in K.S.A. 39-923, and
17 amendments thereto, or a medical care facility, may designate a portion of
18 such adult care home, or the licensed long-term care unit of such medical
19 care facility, as a smoking area, and smoking may be permitted within such
20 designated smoking area.

21 (d) The provisions of this section shall not apply to:

22 (1) The outdoor areas of any building or facility beyond the access
23 points of such building or facility;

24 (2) *any private business so long as the proprietor or other person in*
25 *charge of the private business: (A) Employs and serves only persons 21*
26 *years of age or older; (B) posts or causes to be posted in a conspicuous*
27 *place at each entrance to the premises signs stating that no person under*
28 *the age of 21 will be admitted to the premises; (C) posts or causes to be*
29 *posted in a conspicuous place at each entrance to the premises signs*
30 *stating that such private business permits smoking on the premises only*
31 *for persons 21 years of age or older; and (D) posts the signs required to*
32 *be posted under this paragraph (2) so that the signs are visible at*
33 *approximately eye level and are at least 12 inches by 12 inches in size;*

34 ~~(2)~~ (3) private homes or residences, except when such home or
35 residence is used as a day care home, as defined in K.S.A. 65-530, and
36 amendments thereto;

37 ~~(3)~~ (4) a hotel or motel room rented to one or more guests if the total
38 percentage of such hotel or motel rooms in such hotel or motel does not
39 exceed 20%;

40 ~~(4)~~ (5) the gaming floor of a lottery gaming facility or racetrack
41 gaming facility, as those terms are defined in K.S.A. 74-8702, and
42 amendments thereto;

43 ~~(5)~~ (6) that portion of an adult care home, as defined in K.S.A. 39-

1 923, and amendments thereto, that is expressly designated as a smoking
2 area by the proprietor or other person in charge of such adult care home
3 pursuant to subsection (c) and that is fully enclosed and ventilated;

4 ~~(6)~~ (7) that portion of a licensed long-term care unit of a medical care
5 facility that is expressly designated as a smoking area by the proprietor or
6 other person in charge of such medical care facility pursuant to subsection
7 (c) and that is fully enclosed and ventilated and to which access is
8 restricted to the residents and their guests;

9 ~~(7)~~ (8) tobacco shops;

10 ~~(8)~~ (9) a class A or class B club defined in K.S.A. 41-2601, and
11 amendments thereto, which: (A) Held a license pursuant to K.S.A. 41-
12 2606 et seq., and amendments thereto, as of January 1, 2009; and (B)
13 notifies the secretary of health and environment in writing, not later than
14 90 days after the effective date of this act, that it wishes to continue to
15 allow smoking on its premises;

16 ~~(9)~~ (10) a private club in designated areas where minors are
17 prohibited; and

18 ~~(10)~~ (11) any benefit cigar dinner or other cigar dinner of a
19 substantially similar nature that:

20 (A) Is conducted specifically and exclusively for charitable purposes
21 by a nonprofit organization which is exempt from federal income taxation
22 pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

23 (B) is conducted no more than once per calendar year by such
24 organization; and

25 (C) has been held during each of the previous three years prior to
26 January 1, 2011.

27 Sec. 3. K.S.A. 2012 Supp. 21-6109 and 21-6110 are hereby repealed.

28 Sec. 4. This act shall take effect and be in force from and after its
29 publication in the statute book.