

HOUSE BILL No. 2563

By Committee on Federal and State Affairs

2-4

1 AN ACT concerning cigarettes and tobacco products; increasing the
2 minimum age to purchase or possess such products; prohibiting
3 cigarette vending machines and self-service displays; amending K.S.A.
4 72-6285, 79-3301, 79-3302, 79-3303, 79-3304, 79-3309, 79-3316, 79-
5 3321, 79-3322, 79-3323, 79-3326, 79-3334, 79-3335, 79-3388, 79-
6 3391, 79-3394, 79-3396 and 79-3399 and K.S.A. 2019 Supp. 21-5102,
7 21-6109, 21-6110 and 50-6a14 and repealing the existing sections; also
8 repealing K.S.A. 79-3310c.
9

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

11 Section 1. K.S.A. 2019 Supp. 21-5102 is hereby amended to read as
12 follows: 21-5102. A crime is an act or omission defined by law and for
13 which, upon conviction, a sentence of death, imprisonment or fine, or both
14 imprisonment and fine, is authorized or, in the case of a traffic infraction
15 or a cigarette or tobacco infraction, a fine is authorized. Crimes are
16 classified as felonies, misdemeanors, traffic infractions and cigarette or
17 tobacco infractions.

18 (a) A felony is a crime punishable by death or by imprisonment in
19 any state correctional institution or a crime which is defined as a felony by
20 law.

21 (b) A traffic infraction is a violation of any of the statutory provisions
22 listed in ~~subsection (e) of K.S.A. 8-2118(c)~~, and amendments thereto.

23 (c) A cigarette or tobacco infraction is a violation of K.S.A. 2019
24 Supp. 21-6109 through 21-6114 and 21-6116 ~~and subsection (m) or (n) of~~
25 ~~K.S.A. 79-3321~~, and amendments thereto.

26 (d) All other crimes are misdemeanors.

27 Sec. 2. K.S.A. 2019 Supp. 21-6109 is hereby amended to read as
28 follows: 21-6109. As used in K.S.A. 2019 Supp. 21-6109 through 21-6116,
29 and amendments thereto:

30 (a) "Access point" means the area within a ten foot radius outside of
31 any doorway, open window or air intake leading into a building or facility
32 that is not exempted pursuant to K.S.A. 2019 Supp. 21-6110(d), and
33 amendments thereto.

34 (b) "Bar" means any indoor area that is operated and licensed for the
35 sale and service of alcoholic beverages, including alcoholic liquor as
36 defined in K.S.A. 41-102, and amendments thereto, or cereal malt

1 beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-
2 premises consumption.

3 (c) "Electronic cigarette" means the same as such term is defined in
4 K.S.A. 79-3301, and amendments thereto.

5 (d) "Employee" means any person who is employed by an
6 employer in consideration for direct or indirect monetary wages or profit
7 and any person who volunteers their services for a nonprofit entity.

8 (e) "Employer" means any person, partnership, corporation,
9 association or organization, including municipal or nonprofit entities, that
10 employs one or more individual persons.

11 (f) "Enclosed area" means all space between a floor and ceiling
12 that is enclosed on all sides by solid walls, windows or doorways that
13 extend from the floor to the ceiling, including all space therein screened by
14 partitions that do not extend to the ceiling or are not solid or similar
15 structures. For purposes of this section, the following shall not be
16 considered an "enclosed area": (1) Rooms or areas, enclosed by walls,
17 windows or doorways, having neither a ceiling nor a roof and that are
18 completely open to the elements and weather at all times; and (2) rooms or
19 areas, enclosed by walls, fences, windows or doorways and a roof or
20 ceiling, having openings that are permanently open to the elements and
21 weather and that comprise an area that is at least 30% of the total
22 perimeter wall area of such room or area.

23 (g) "Food service establishment" means any place in which food is
24 served or is prepared for sale or service on the premises. Such term shall
25 include, but not be limited to, fixed or mobile restaurants, coffee shops,
26 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
27 shops, soda fountains, taverns, private clubs, roadside kitchens,
28 commissaries and any other private, public or nonprofit organization or
29 institution routinely serving food and any other eating or drinking
30 establishment or operation where food is served or provided for the public
31 with or without charge.

32 (h) "Gaming floor" means the area of a lottery gaming facility or
33 racetrack gaming facility, as those terms are defined in K.S.A. 74-8702,
34 and amendments thereto, where patrons engage in Class III gaming. The
35 gaming floor shall not include any areas used for accounting, maintenance,
36 surveillance, security, administrative offices, storage, cash or cash
37 counting, records, food service, lodging or entertainment, except that the
38 gaming floor may include a bar where alcoholic beverages are served so
39 long as the bar is located entirely within the area where Class III gaming is
40 conducted.

41 (i) "Medical care facility" means a physician's office, general
42 hospital, special hospital, ambulatory surgery center or recuperation center,
43 as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric

Strike in lines 32-41

And by relettering subsections accordingly

1 hospital licensed under K.S.A. 2019 Supp. 39-2001 et seq., and
2 amendments thereto.

3 ~~(j)~~(j) "Outdoor recreational facility" means a hunting, fishing,
4 shooting or golf club, business or enterprise operated primarily for the
5 benefit of its owners, members and their guests and not normally open to
6 the general public.

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

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

21 ~~(m)~~(m) "Public building" means any building owned or operated by:
22 (1) The state, including any branch, department, agency, bureau,
23 commission, authority or other instrumentality thereof; (2) any county,
24 city, township, other political subdivision, including any commission,
25 authority, agency or instrumentality thereof; or (3) any other separate
26 corporate instrumentality or unit of the state or any municipality.

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

30 ~~(o)~~(o) "Public place" means any enclosed areas open to the public or
31 used by the general public including, but not limited to: Banks, bars, food
32 service establishments, retail service establishments, retail stores, public
33 means of mass transportation, passenger elevators, health care institutions
34 or any other place where health care services are provided to the public,
35 medical care facilities, educational facilities, libraries, courtrooms, public
36 buildings, restrooms, grocery stores, school buses, museums, theaters,
37 auditoriums, arenas and recreational facilities. For purposes of this section,
38 a private residence shall not be considered a "public place" unless such
39 residence is used as a day care home, as defined in K.S.A. 65-530, and
40 amendments thereto.

41 ~~(p)~~(p) "Smoking" means possession of a lighted cigarette, cigar, pipe
42 or burning tobacco in any other form or device designed for the use of
43 tobacco, *or use of an electronic cigarette.*

1 ~~(p)~~(q) "Tobacco shop" means any indoor area operated primarily for
2 the retail sale of tobacco, tobacco products or smoking devices or
3 accessories, and that derives not less than 65% of its gross receipts from
4 the sale of tobacco.

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

10 Sec. 3. K.S.A. 2019 Supp. 21-6110 is hereby amended to read as
11 follows: 21-6110. (a) It shall be unlawful, with no requirement of a
12 culpable mental state, to smoke in an enclosed area or at a public meeting
13 including, but not limited to:

- 14 (1) Public places;
- 15 (2) taxicabs and limousines;
- 16 (3) restrooms, lobbies, hallways and other common areas in public
17 and private buildings, condominiums and other multiple-residential
18 facilities;
- 19 (4) restrooms, lobbies and other common areas in hotels and motels
20 and in at least 80% of the sleeping quarters within a hotel or motel that
21 may be rented to guests;
- 22 (5) access points of all buildings and facilities not exempted pursuant
23 to subsection (d); and
- 24 (6) any place of employment.

25 (b) Each employer having a place of employment that is an enclosed
26 area shall provide a smoke-free workplace for all employees. Such
27 employer shall also adopt and maintain a written smoking policy ~~which~~
28 ~~shall prohibit that prohibits~~ smoking without exception in all areas of the
29 place of employment. Such policy shall be communicated to all current
30 employees within one week of its adoption and shall be communicated to
31 all new employees upon hiring. Each employer shall provide a written
32 copy of the smoking policy upon request to any current or prospective
33 employee.

34 (c) Notwithstanding any other provision of this section, K.S.A. 2019
35 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other
36 person in charge of an adult care home, as defined in K.S.A. 39-923, and
37 amendments thereto, or a medical care facility, may designate a portion of
38 such adult care home, or the licensed long-term care unit of such medical
39 care facility, as a smoking area, and smoking may be permitted within such
40 designated smoking area.

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

- 42 (1) The outdoor areas of any building or facility beyond the access
43 points of such building or facility;

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

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

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

10 ~~(5)~~—that portion of an adult care home, as defined in K.S.A. 39-923,
11 and amendments thereto, that is expressly designated as a smoking area by
12 the proprietor or other person in charge of such adult care home pursuant
13 to subsection (c) and that is fully enclosed and ventilated;

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

19 (7) tobacco shops;

20 (8) a class A or class B club, as defined in K.S.A. 41-2601, and
21 amendments thereto, ~~which that:~~ (A) Held a license pursuant to K.S.A. 41-
22 2606 et seq., and amendments thereto, as of January 1, 2009; and (B)
23 notifies the secretary of health and environment in writing, not later than
24 90 days after the effective date of this act, that it wishes to continue to
25 allow smoking on its premises;

26 (9) a private club in designated areas where ~~minors~~ *persons under the*
27 *age of 21* are prohibited;

28 (10) any benefit cigar dinner or other cigar dinner of a substantially
29 similar nature that:

30 (A) Is conducted specifically and exclusively for charitable purposes
31 by a nonprofit organization ~~which that~~ is exempt from federal income
32 taxation pursuant to section 501(c)(3) of the federal internal revenue code
33 of 1986;

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

36 (C) has been held during each of the previous three years prior to
37 January 1, 2011; and

38 (11) that portion of a medical or clinical research facility constituting
39 a separately ventilated, secure smoking room dedicated and used solely
40 and exclusively for clinical research activities conducted in accordance
41 with regulatory authority of the United States or the state of Kansas, as
42 determined by the director of alcoholic beverage control of the department
43 of revenue.

Strike in lines 7-10

And by renumbering subsections accordingly