

HOUSE BILL No. 2495

By Committee on Federal and State Affairs

2-22

9 AN ACT concerning smoking; enacting the Kansas public smoking ban
10 act; prohibiting certain acts and providing penalties for violations; re-
11 pealing K.S.A. 21-4009 through 21-4014.
12

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

14 Section 1. (a) This act may be cited as the Kansas public smoking
15 ban act.

16 (b) On and after January 1, 2007, the provisions of this act shall apply
17 within each city and within the unincorporated area of each county unless
18 the voters of such city or such unincorporated area of a county have voted
19 to have the provisions of this act not apply within such city or unincor-
20 porated area, and have not subsequently voted to have the provisions of
21 this act apply within such city or unincorporated area, as provided in
22 section 14, and amendments thereto.

23 Sec. 2. As used in this act:

24 (a) "Business" means any sole proprietorship, partnership, joint ven-
25 ture, corporation or other business entity formed for profit-making pur-
26 poses, including, but not limited to, retail establishments where goods or
27 services are sold as well as professional corporations and other entities
28 where legal, medical, dental, engineering, architectural or other profes-
29 sional services are delivered.

30 (b) "Employee" means any person who is employed by an employer
31 in consideration for direct or indirect monetary wages or profit, and any
32 person who volunteers such person's services for a nonprofit entity.

33 (c) "Employer" means any person, partnership, nonprofit entity or
34 corporation, including a municipal corporation, which employs the serv-
35 ices of one or more individual persons.

36 (d) "Enclosed area" means all space between a floor and ceiling
37 which is enclosed on all sides by solid walls or windows (exclusive of door
38 or passage ways) which extend from the floor to the ceiling, including all
39 space therein screened by partitions which do not extend to the ceiling
40 or are not solid, "office landscaping" or similar structures.

41 (e) "Food service establishment" means any place in which food is
42 served or is prepared for sale or service on the premises or elsewhere,
43 including, but not limited to, fixed or mobile restaurants, coffee shops,

1 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
2 shops, soda fountains, taverns, private clubs, roadside kitchens, commis-
3 saries and other private, public or nonprofit organizations or institutions
4 routinely serving food and any other eating or drinking establishments or
5 operation where food is served or provided for the public with or without
6 charge.

7 (f) "Licensed premises" means any premises licensed pursuant to the
8 provisions of the club and drinking establishment act or K.S.A. 41-2701
9 et seq., and amendments thereto.

10 (g) "Place of employment" means any enclosed area under the con-
11 trol of public or private employer which employees normally frequent
12 during the course of employment, including, but not limited to, work
13 areas, employee lounges and restrooms, conference rooms, classrooms,
14 employee cafeterias and hallways. A private residence is not a "place of
15 employment" unless it is used as a childcare facility, adult day care or
16 health care facility.

17 (h) "Private place" means any enclosed area to which the public is
18 not invited or in which the public is not permitted, including, but not
19 limited to, personal residences or personal motor vehicles. "Private place"
20 does not include a privately owned business which is open to the public.

21 (i) "Public place" means any enclosed area to which the public is
22 invited or in which the public is permitted, including, but not limited to,
23 banks, educational facilities, health facilities, laundromats, public trans-
24 portation facilities, reception areas, production and marketing establish-
25 ments, retail service establishments, retail stores, theaters and waiting
26 rooms. A private residence is not a "public place."

27 (j) "Retail tobacco store" means a retail store utilized primarily for
28 the sale of tobacco products and accessories and in which the sale of other
29 products is merely incidental.

30 (k) "Service line" means any indoor line at which one or more persons
31 are waiting for or receiving service of any kind, whether or not such
32 service involves the exchange of money.

33 (l) "Smoking" means inhaling, exhaling, burning or carrying any
34 lighted cigar, cigarette, pipe or weed.

35 (m) "Sports arena" means any sports pavilion, gymnasium, health spa,
36 boxing arena, swimming pool, roller or ice rink, bowling alley or other
37 similar place where members of the general public assemble to engage
38 in physical exercise, participate in athletic competition or witness sports
39 events.

40 Sec. 3. On and after January 1, 2007, smoking shall be prohibited in
41 all enclosed public places, including, but not limited to, the following
42 places:

43 (a) Elevators;

- 1 (b) restrooms, lobbies, reception areas, hallways and any other com-
2 mon-use areas;
- 3 (c) buses, bus terminals, taxicabs, train stations, airports and other
4 facilities and means of public transit, as well as ticket, boarding and wait-
5 ing areas of public transit depots;
- 6 (d) service lines;
- 7 (e) retail stores;
- 8 (f) all areas available to and customarily used by the general public
9 in all businesses and nonprofit entities patronized by the public, including,
10 but not limited to, attorneys' offices and other offices, banks, laundromats,
11 hotels and motels;
- 12 (g) galleries, libraries and museums, and their grounds;
- 13 (h) facilities which are primarily used for exhibiting motion picture,
14 stage, drama, lecture, musical recital or other similar performance;
- 15 (i) convention halls;
- 16 (j) rooms, chambers and places of meeting or public assembly, in-
17 cluding school buildings, under the control of any board, council, com-
18 mission or committee, including, but not limited to, agencies of the state
19 or subdivisions of the state, during such time as a public meeting is in
20 progress;
- 21 (k) waiting rooms, hallways, wards and semiprivate rooms of health
22 facilities, including, but not limited to, hospitals, clinics, physical therapy
23 facilities, doctors' offices and dentists' offices;
- 24 (l) lobbies, hallways and other common areas in apartment buildings,
25 condominiums, trailer parks, retirement facilities, nursing homes and
26 other multiple-unit residential facilities;
- 27 (m) polling places; and
- 28 (n) private clubs and fraternal organization facilities.
- 29 Sec. 4. On and after January 1, 2007, smoking shall be prohibited in
30 the following public places, whether or not enclosed:
- 31 (a) Sports arenas; and
- 32 (b) food service establishments and licensed premises.
- 33 Sec. 5. On and after January 1, 2007:
- 34 (a) Smoking shall be prohibited in all enclosed places of employment.
- 35 (b) It shall be the responsibility of an employer to provide a smoke-
36 free workplace for all employees.
- 37 Sec. 6. Notwithstanding any other provision of this act, any owner,
38 operator, manager or other person who controls any establishment de-
39 scribed in this act may declare that entire establishment as a non-smoking
40 establishment.
- 41 Sec. 7. On and after January 1, 2007, all enclosed facilities owned by
42 the state or any agency or subdivision of the state shall be non-smoking
43 at all times notwithstanding any other provision of this act.

1 Sec. 8. Notwithstanding any other provision of this act to the con-
2 trary, the following areas shall not be subject to the smoking restrictions
3 of this act:

4 (a) Private residences, except when used as a childcare, adult day care
5 or health care facility;

6 (b) no more than 15% of the guest rooms of any hotel and motel;

7 (c) retail tobacco stores;

8 (d) outdoor places of employment except those specified in section
9 4, and amendments thereto, and those declared as non-smoking estab-
10 lishments pursuant to section 5, and amendments thereto; and

11 (e) private places.

12 Sec. 9. On and after January 1, 2007, the owner, manager or other
13 person having control of any building or other areas where smoking is
14 prohibited by this act shall have conspicuously posted a sign clearly stating
15 that smoking is prohibited at each entrance and within the building or
16 other areas where smoking is prohibited. Each such sign shall have bold
17 lettering not less than one inch in height. The international “no smoking”
18 symbol, consisting of a pictorial representation of a burning cigarette en-
19 closed in a red circle with red bar across it, may also be used.

20 Sec. 10. The department of health and environment shall promote
21 the purposes and requirements of this act to the public affected by it and
22 shall guide owners, operators and managers in compliance with it. Such
23 promotion may include publication of a brochure for affected businesses
24 and individuals explaining the provisions of this act.

25 Sec. 11. (a) The licensing authority shall give notice of the require-
26 ments of this act to each applicant for a retailer’s license under the Kansas
27 liquor control act, each applicant for a license under the club and drinking
28 establishment act and each applicant for a retailer’s license pursuant to
29 K.S.A. 41-2701 et seq., and amendments thereto.

30 (b) The owner, manager, operator or employee of any establishment
31 regulated by this act shall be responsible for informing persons violating
32 this act of the provisions through appropriate signage.

33 Sec. 12. On and after January 1, 2007, no person or employer shall
34 discharge, refuse to hire or in any manner retaliate against any employee,
35 applicant for employment or customer because such employee, applicant
36 or customer exercises any right to a smoke free environment afforded by
37 this act.

38 Sec. 13. (a) On and after January 1, 2007, it shall be unlawful for any
39 person who owns, manages, operates or otherwise controls the use of any
40 premises subject to regulation under this act to fail to comply with all of
41 its provisions.

42 (b) On and after January 1, 2007, it shall be unlawful for any person
43 to smoke in any area where smoking is prohibited by the provisions of

1 this act.

2 (c) Violation of any provision of this act is a misdemeanor punishable
3 by a fine not exceeding \$100, except a second violation within a 12-month
4 period shall be punishable by a fine not exceeding \$200 and a third or
5 subsequent violation within a 12-month period shall be punishable by a
6 fine not exceeding \$500.

7 Sec. 14. (a) (1) The governing body of any city may, by resolution,
8 or shall, upon a petition filed in accordance with subsection (b), submit
9 to the qualified electors of the city at any state general election: (A) A
10 proposition to have the provisions of this act not apply within the city; or
11 (B) a proposition to have the provisions of this act apply within the city,
12 if the voters of the city previously have voted to have the provisions of
13 this act not apply within the city.

14 (2) The board of county commissioners of any county may, by reso-
15 lution, or shall, upon a petition filed in accordance with subsection (b),
16 submit to the qualified electors of the unincorporated area of the county
17 at any state general election: (A) A proposition to have the provisions of
18 this act not apply within the unincorporated area of the county; or (B) a
19 proposition to have the provisions of this act apply within the unincor-
20 porated area of the county, if the voters of the unincorporated area of the
21 county previously have voted to have the provisions of this act not apply
22 within the unincorporated area of the county.

23 (b) A petition to submit a proposition to the qualified voters of a city
24 or unincorporated area of a county pursuant to this section shall be filed
25 with the county election officer. The petition shall be signed by qualified
26 electors of the city or unincorporated area of the county, as applicable,
27 equal in number to not less than 5% of the electors of such city or un-
28 incorporated area of the county who voted for the office of secretary of
29 state at the last preceding general election at which such office was
30 elected. The appropriate version following shall appear on the petition:

31 “We request an election to determine whether the provisions of the
32 Kansas public smoking ban act shall apply within (the city of _____)
33 (the unincorporated area of _____ county).”

34 (c) Upon the adoption of a resolution or the submission of a valid
35 petition calling for an election pursuant to this section, the county election
36 officer shall cause the appropriate version of the following proposition to
37 be placed on the ballot within the city or the unincorporated area of the
38 county, as applicable, at the next succeeding state general election which
39 occurs more than 90 days after the resolution is adopted or the petition
40 is filed with the county election officer:

41 “Shall the provisions of the Kansas public smoking ban act apply within
42 (the city of _____) (the unincorporated area of _____
43 county)?”

- 1 (d) If a majority of the votes cast and counted is in favor of the prop-
2 position, the provisions of this act shall apply within the city or the unin-
3 corporated area of the county, as applicable. If a majority of the votes
4 cast and counted is against the proposition, the provisions of this act shall
5 not apply within the city or the unincorporated area of the county, as
6 applicable. The county election officer shall transmit a copy of the results
7 of the election to the director of alcoholic beverage control and the sec-
8 retary of health and environment to assist in carrying out their responsi-
9 bilities pursuant to this act.
- 10 (e) The election provided for by this section shall be conducted, and
11 the votes counted and canvassed, in the manner provided by law for
12 question submitted elections of the county.
- 13 Sec. 15. If any provision of this act or the application thereof to any
14 person or circumstances is held invalid, the invalidity shall not affect the
15 other provisions of this act which can be given effect without the invalid
16 provision or application. To this end the provisions of this act are
17 severable.
- 18 Sec. 16. On and after January 1, 2007, K.S.A. 21-4009 through 21-
19 4014 are hereby repealed.
- 20 Sec. 17. This act shall take effect and be in force from and after its
21 publication in the statute book.