

SENATE BILL No. 37

By Committee on Judiciary

1-9

10 AN ACT concerning crimes and punishments; relating to smoking;
11 amending K.S.A. 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and
12 ~~K.S.A. 2006 Supp. 20-350~~ and repealing the existing sections; also re-
13 pealing K.S.A. 21-4017.

14

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

16 Section 1. K.S.A. 21-4009 is hereby amended to read as follows: 21-
17 4009. As used in this act:

18 (a) “Auditorium” means the part of a public building where an au-
19 dience gathers to attend a performance, and includes any corridors, hall-
20 ways, or lobbies adjacent thereto.

21 (b) “Bar” means any indoor area that is operated and licensed pri-
22 marily for the sale and service of alcoholic beverages for on-premises
23 consumption and where the service of food is secondary to the consump-
24 tion of such beverages.

25 (c) “Cigar-tobacco bar” means an establishment whose business is
26 devoted to the serving of only tobacco products and alcohol for consump-
27 tion by guests on the premises and prohibits the entry of persons 18 years
28 of age and under at all times. The establishment must have revenue gen-
29 erated from the serving of tobacco products equal to or greater than 20%
30 of the total combined revenue generated by the service of tobacco and
31 beverage.

32 (d) “Cigarette” means any roll for smoking, made wholly or in part
33 of tobacco, irrespective of size or shape, and irrespective of tobacco being
34 flavored, adulterated or mixed with any other ingredient if the wrapper
35 is in greater part made of any material except tobacco.

36 (e) “Commercial motor vehicle” means a motor vehicle used on
37 a highway in interstate or intrastate commerce to transport prop-
38 erty when the vehicle:

39 (1) **Has a gross weight rating, or gross vehicle weight or gross**
40 **combination weight, of 10,001 pounds or more; and**

41 (2) **is not used in transporting material found by the United**
42 **States secretary of transportation to be hazardous under 49 U.S.C.**
43 **5103 and transported in a quantity requiring placarding under reg-**

- 1 **ulations prescribed by the United States secretary of transportation**
 2 **under 49 CFR, subtitle B, chapter I, subchapter C, and is subject**
 3 **to the provisions of 49 CFR 397.13 as enacted on December 12,**
 4 **1994.**
- 5 ~~(e)~~ **(f)** “Employee” means any person who:
 6 (1) Performs any type of work for benefit of another in consideration
 7 of direct or indirect wages or profit; or
 8 (2) provides uncompensated work or services to a business or non-
 9 profit entity.
- 10 ~~(f)~~ **(g)** “Employer” means any person, partnership, association, cor-
 11 poration or nonprofit entity that employs one or more persons. “Em-
 12 ployer” includes, without limitation, the legislative, executive and judicial
 13 branches of state government; any county, city and county, city, or town,
 14 or instrumentality thereof, or any other political subdivision of the state,
 15 special district, authority, commission or agency; or any other separate
 16 corporate instrumentality or unit of state or local government.
- 17 ~~(g)~~ **(h)** “Entryway” means the outside of any doorway leading into a
 18 building or facility that is not exempted from this act. “Entryway” also
 19 includes the area of public or private property within a 10 foot radius
 20 outside of the doorway.
- 21 ~~(h)~~ **(i)** “Food service establishment” means any indoor area or portion
 22 thereof in which ~~the principal business is~~ **more than 50% of its revenue**
 23 **is derived from** the sale of food for on-premises consumption. The term
 24 includes, without limitation, restaurants, bar and grills, cafeterias, coffee
 25 shops, diners, sandwich shops and short-order cafes.
- 26 ~~(i)~~ **(j)** “Indoor area” means any enclosed area or portion thereof. The
 27 opening of windows or doors, or the temporary removal of wall panels,
 28 does not convert an indoor area into an outdoor area.
- 29 ~~(j)~~ **(k)** “Local authority” means a county, city and county, city or
 30 town.
- 31 ~~(k)~~ **(l)** “Medical care facility” means a general hospital, special hos-
 32 pital, ambulatory surgery center or recuperation center, as defined by
 33 K.S.A. 65-425, and amendments thereto, and any psychiatric hospital li-
 34 censed under K.S.A. 75-3307b, and amendments thereto.
- 35 ~~(l)~~ **(m)** “Place of employment” means any indoor area or portion
 36 thereof under the control of an employer in which employees of the em-
 37 ployer perform services for, or on behalf of, the employer.
- 38 ~~(m)~~ **(n)** “Public building” means any building owned or operated by:
 39 (1) The state, including the legislative, executive and judicial branches
 40 of state government;
 41 (2) any county, city and county, city or town, or instrumentality
 42 thereof, or any other political subdivision of the state, a special district,
 43 an authority, a commission or an agency; or

1 (3) *any other separate corporate instrumentality or unit of state or*
 2 *local government.*

3 ~~(n)~~ (o) “Public place” means enclosed indoor areas open to the public
 4 or used by the general public including but not limited to: ~~Restaurants,~~
 5 *Food service establishments, bars,* retail stores, public means of mass
 6 transportation, passenger elevators, health care institutions or any other
 7 place where health care services are provided to the public, educational
 8 facilities, libraries, courtrooms, ~~state, county or municipal buildings,~~ rest-
 9 rooms, grocery stores, school buses, museums, theaters, auditoriums, arenas,
 10 *bowling alleys, billiard pool halls and any other recreational facilities.*

11 ~~(b)~~ “Public meeting” ~~includes all meetings open to the public.~~

12 ~~(c)~~ ~~(o)~~ (p) “Public meeting” means any meeting open to the public
 13 pursuant to K.S.A. 75-4317 *et seq.*, and amendments thereto, or any other
 14 law of this state.

15 ~~(p)~~ (q) “Secondhand smoke” means the complex mixture formed from
 16 the escaping smoke of a burning tobacco product, also known as “sides-
 17 tream smoke”, and smoke exhaled by the smoker.

18 ~~(q)~~ (r) “Smoking” means possession of a lighted cigarette, cigar, pipe
 19 or any other lighted smoking equipment.

20 ~~(r)~~ (s) “Tobacco” means *cigars, cheroots, stogies, periques; granu-*
 21 *lated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff,*
 22 *snuff flour, cavendish; plug and twist tobacco; fine cut and other chewing*
 23 *tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of to-*
 24 *bacco, and other kinds and forms of tobacco, prepared in such manner*
 25 *as to be suitable for chewing or smoking in a pipe or otherwise, or both*
 26 *for chewing and smoking. Tobacco products does not include cigarettes.*

27 ~~(s)~~ (t) “Tobacco business” means a sole proprietorship, corporation,
 28 partnership or other enterprise engaged in the sale, manufacture or pro-
 29 motion of tobacco, tobacco products or smoking devices or accessories,
 30 either at wholesale or retail, and in which less than 25% of its revenue is
 31 derived from the sale, manufacture or promotion of other products.

32 ~~(t)~~ (u) “Work area” means an area in a place of employment where
 33 one or more employees are routinely assigned and perform services for or
 34 on behalf of their employer.

35 Sec. 2. K.S.A. 21-4010 is hereby amended to read as follows: 21-
 36 4010. (a) No person shall smoke in a public place or at a public meeting
 37 except in designated smoking areas.

38 ~~(b)~~ Smoking areas may be designated by proprietors or other persons
 39 in charge of public places, except in passenger elevators, school buses,
 40 public means of mass transportation and any other place in which smoking
 41 is prohibited by the fire marshal or by other law, ordinance or regulation.

42 ~~(c)~~ Where smoking areas are designated, existing physical barriers
 43 and ventilation systems shall be used to minimize the toxic effect of smoke

1 ~~in adjacent nonsmoking areas~~; any indoor area, including, but not limited
2 to:

3 (1) Public places;

4 (2) public buildings;

5 (3) public meetings;

6 (4) taxicabs and limousines;

7 (5) gymnasiums;

8 (6) child day care facilities licensed by the Kansas department of
9 health and environment;

10 (7) medical care facilities;

11 (8) any place of employment that is not exempted;

12 (9) restrooms, lobbies, hallways and other common areas in public
13 and private buildings, condominiums and other multiple-residential
14 facilities;

15 (10) restrooms, lobbies and other common areas in hotels and motels
16 and in at least 75% of the sleeping quarters within a hotel or motel that
17 may be rented to guests;

18 (11) the common areas of ~~retirement facilities~~, publicly owned hous-
19 ing facilities ~~and nursing homes~~, not including any resident's private res-
20 idential quarters; and

21 (12) the entryways of all buildings and facilities listed in paragraphs
22 (1) through (11) of this subsection.

23 (b) A cigar-tobacco bar shall display a sign in at least one conspicuous
24 place and at least four inches by six inches in size stating: "Smoking al-
25 lowed. Children under 18 years of age prohibited".

26 (c) Smoking shall be prohibited within 10 feet of any operable win-
27 dows and ventilation systems of enclosed areas where smoking is prohib-
28 ited, so as to insure that tobacco smoke does not enter those areas.

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

30 (1) Private homes, private residences and private automobiles, except
31 if any such home, residence or vehicle is being used for a licensed child
32 care or day care or if a private vehicle is being used for the public trans-
33 portation of children by a licensed health care facility or day care facility;

34 (2) limousines under private hire;

35 (3) a hotel or motel room rented to one or more guests if the total
36 percentage of such hotel or motel rooms in such hotel or motel does not
37 exceed 25%;

38 (4) any retail tobacco business;

39 (5) a cigar-tobacco bar;

40 (6) the outdoor area of any business beyond 10 feet of any entrance
41 or exit to such business; ~~or~~

42 (7) any ~~private~~ **Class A** club licensed pursuant to K.S.A. 41-2601 et
43 seq., and amendments thereto;

- 1 **(8) a benefit cigar dinner for charitable purposes;**
 2 **(9) any adult care home licensed pursuant to K.S.A. 39-923 et**
 3 **seq., and amendments thereto;**
 4 **(10) any veterans administration hospital within the state;**
 5 **(11) any Kansas soldiers' home established pursuant to K.S.A.**
 6 **76-1901 et seq., and amendments thereto, or veterans' home estab-**
 7 **lished pursuant to K.S.A. 76-1951 et seq., and amendments thereto;**
 8 **(12) designated smoking areas in passenger trains;**
 9 **(13) freight trains; or**
 10 **(14) any commercial motor vehicle.**

11 Sec. 3. K.S.A. 21-4011 is hereby amended to read as follows: 21-
 12 4011. The proprietor or other person in charge of the premises of a public
 13 place shall post or cause to be posted in a conspicuous place signs clearly
 14 stating that smoking is prohibited by state law. ~~The person in charge of~~
 15 ~~the premises shall also post or cause to be posted in any designated smok-~~
 16 ~~ing area, signs stating that smoking is permitted in such room or area.~~
 17 ~~The proprietor or person in charge of the public place shall have the~~
 18 ~~authority to establish the percentage of area in the public place which~~
 19 ~~shall be posted and designated as a smoking area.~~

20 Sec. 4. K.S.A. 21-4012 is hereby amended to read as follows: 21-
 21 4012. (a) Any person found guilty of smoking in violation of ~~this act~~ K.S.A.
 22 21-4010, and amendments thereto, is guilty of a class C nonperson mis-
 23 demeanor punishable by a fine of not more than ~~\$20 for each violation.~~
 24 ~~\$200 for a first violation within a calendar year, a fine of not more than~~
 25 ~~\$300 for a second violation within a calendar year and a fine of not more~~
 26 ~~than \$500 for each additional violation within a calendar year. Each day~~
 27 ~~of a continuing violation shall be deemed a separate violation.~~

28 (b) Any person found guilty of failing to post signs as required by ~~this~~
 29 ~~act~~ K.S.A. 21-4011, and amendments thereto, is guilty of a class C non-
 30 person misdemeanor punishable by a fine of not more than \$50. In ad-
 31 dition, the department of health and environment, or local department
 32 of health, may institute an action in any court of competent jurisdiction
 33 to enjoin repeated violations of this act.

34 ~~(c) All moneys received by the clerks of the district court from the~~
 35 ~~payment of fines collected as a result of a conviction of any persons for~~
 36 ~~violation of any provision of this section shall be remitted in the following~~
 37 ~~manner:~~

38 ~~(1) Seventy-five percent of any such fine for a violation occurring~~
 39 ~~within the corporate limits of a city, town or city and county shall be~~
 40 ~~remitted to the treasurer or chief financial officer of such city, town or~~
 41 ~~city and county and the remaining 25% shall be remitted to the state~~
 42 ~~treasurer who shall deposit the entire amount in the state treasury to the~~
 43 ~~credit of the state general fund.~~

1 ~~—(2) Seventy five percent of any fine for a violation occurring outside~~
2 ~~the corporate limits of a city or town shall be remitted to the treasurer of~~
3 ~~the county in which the city or town is located, and the remaining 25%~~
4 ~~shall be remitted to the state treasurer who shall deposit the entire amount~~
5 ~~in the state treasury to the credit of the state general fund.~~
6 ~~—Sec. 5. K.S.A. 2006 Supp. 20-350 is hereby amended to read as fol-~~
7 ~~lows: 20-350. (a) Except for fines and penalties authorized to be paid~~
8 ~~pursuant to K.S.A. 21-4012, and amendments thereto, or to counties pur-~~
9 ~~suant to K.S.A. 19-101c, and amendments thereto, and subsection (b),~~
10 ~~and amendments thereto, all moneys received by the clerk of the district~~
11 ~~court from the payment of fines, penalties and forfeitures shall be remit-~~
12 ~~ted to the state treasurer in accordance with the provisions of K.S.A. 75-~~
13 ~~4215, and amendments thereto. Upon receipt of each such remittance,~~
14 ~~the state treasurer shall deposit the entire amount in the state treasury~~
15 ~~to the credit of the state general fund, except as provided in K.S.A. 74-~~
16 ~~7336, and amendments thereto, or K.S.A. 8-1345, and amendments~~
17 ~~thereto.~~
18 ~~—(b) Except as provided by K.S.A. 2006 Supp. 20-368, and amend-~~
19 ~~ments thereto, all moneys received by the clerk of the district court from~~
20 ~~the payment of bail forfeitures shall be remitted to the state treasurer in~~
21 ~~accordance with the provisions of K.S.A. 75-4215, and amendments~~
22 ~~thereto. Upon receipt of each such remittance, the state treasurer shall~~
23 ~~deposit the entire amount in the state treasury and shall credit equal~~
24 ~~portions of such remittance to the indigents' defense services fund and~~
25 ~~the state general fund.~~
26 ~~—(c) The chief judge may invest any moneys on deposit in the district~~
27 ~~court account if the moneys are not immediately required for the pur-~~
28 ~~poses for which they were collected or received. Such moneys may be~~
29 ~~invested in: (1) Time deposits, open account or certificates of deposit, for~~
30 ~~periods not to exceed six months, or savings deposits, in commercial banks~~
31 ~~located in the county, except that amounts invested which are not insured~~
32 ~~by the United States government shall be secured in the manner and~~
33 ~~amounts provided by K.S.A. 9-1402, and amendments thereto; (2) United~~
34 ~~States treasury bills or notes with maturities not to exceed six months; or~~
35 ~~(3) savings and loan associations located in the county. No investment of~~
36 ~~more than the amount insured by the federal deposit insurance corpora-~~
37 ~~tion shall be made in any one savings and loan association. Interest~~
38 ~~received from the investment of moneys pursuant to this subsection shall~~
39 ~~be remitted to the state treasurer in accordance with the provisions of~~
40 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of each such~~
41 ~~remittance, the state treasurer shall deposit the entire amount in the state~~
42 ~~treasury to the credit of the state general fund.~~
43 ~~—(d) Upon application of a party to an action in which such party claims~~

1 ownership of moneys held by the district court, the chief judge may invest
2 such moneys in the same manner as provided by subsection (c). Interest
3 received from the investment of moneys pursuant to this subsection shall
4 become the property of the person found to be the owner of the moneys.

5 *New Sec. 5. (a) The board of county commissioners of any*
6 *county may, by resolution, exempt such county from the provisions*
7 *of K.S.A. 21-4009 through 21-4014, and amendments thereto. The*
8 *resolution shall be published once each week for two consecutive*
9 *weeks in the official county newspaper.*

10 *No such resolution shall take effect until 30 days after its final*
11 *publication, and if within 30 days of its final publication a petition*
12 *signed by not less than 5% of the qualified electors of the county*
13 *shall be filed with the county election officer demanding that such*
14 *resolution be submitted to a vote of the electors, it shall not take*
15 *effect until submitted to a referendum and approved by a majority*
16 *of the electors voting thereon.*

17 *(b) Any county election called under the provisions of this act*
18 *shall be called within 30 days and held within 90 days after the*
19 *filing of a petition demanding such election. The board of county*
20 *commissioners shall pass a resolution calling the election and fixing*
21 *the date, which resolution shall be published once in the official*
22 *county newspaper. The sufficiency of the number of signers of any*
23 *petition filed under this act shall be determined by the county elec-*
24 *tion officer. Every election held under this act shall be conducted*
25 *by the county election officer. The county election officer shall pub-*
26 *lish a notice of such election once each week for three consecutive*
27 *weeks in the official county newspaper, the first publication to be*
28 *not less than 21 days prior to such election. The notice shall state*
29 *the time of the election and the proposition which shall appear on*
30 *the ballot. The proposition shall be: "Shall the resolution No. ____*
31 *entitled (title of resolution) take effect?"*

32 *New Sec. 6. If any county exempting such county from the pro-*
33 *visions of K.S.A. 21-4009 through 21-4014, and amendments*
34 *thereto, under section 5, and amendments thereto, such county shall*
35 *comply with the provisions of sections 7 through 12, and amend-*
36 *ments thereto.*

37 *New Sec. 7. As used in sections 7 through 12, and amendments*
38 *thereto: (a) "Public place" means enclosed indoor areas open to the*
39 *public or used by the general public including, but not limited to:*
40 *Restaurants, retail stores, public means of mass transportation, pas-*
41 *senger elevators, health care institutions or any other place where*
42 *health care services are provided to the public, educational facili-*
43 *ties, libraries, courtrooms, state, county or municipal buildings,*

1 *restrooms, grocery stores, school buses, museums, theaters, audi-*
2 *toriums, arenas and recreational facilities.*

3 *(b) “Public meeting” includes all meetings open to the public.*

4 *(c) “Smoking” means possession of a lighted cigarette, cigar,*
5 *pipe or any other lighted smoking equipment.*

6 *New Sec. 8. (a) No person shall smoke in a public place or at a*
7 *public meeting except in designated smoking areas.*

8 *(b) Smoking areas may be designated by proprietors or other*
9 *persons in charge of public places, except in passenger elevators,*
10 *school buses, public means of mass transportation and any other*
11 *place in which smoking is prohibited by the fire marshal or by other*
12 *law, ordinance or regulation.*

13 *(c) Where smoking areas are designated, existing physical bar-*
14 *riers and ventilation systems shall be used to minimize the toxic*
15 *effect of smoke in adjacent nonsmoking areas.*

16 *New Sec. 9. The proprietor or other person in charge of the*
17 *premises of a public place shall post or cause to be posted in a*
18 *conspicuous place signs clearly stating that smoking is prohibited*
19 *by state law. The person in charge of the premises shall also post*
20 *or cause to be posted in any designated smoking area, signs stating*
21 *that smoking is permitted in such room or area. The proprietor or*
22 *person in charge of the public place shall have the authority to*
23 *establish the percentage of area in the public place which shall be*
24 *posted and designated as a smoking area.*

25 *New Sec. 10. Any person found guilty of smoking in violation*
26 *of sections 7 through 12, and amendments thereto, is guilty of a*
27 *misdemeanor punishable by a fine of not more than \$20 for each*
28 *violation. In addition, the department of health and environment,*
29 *or local department of health, may institute an action in any court*
30 *of competent jurisdiction to enjoin repeated violations of sections 7*
31 *through 12, and amendments thereto.*

32 *New Sec. 11. Nothing in sections 7 through 12, and amend-*
33 *ments thereto, shall prevent any city from regulating smoking*
34 *within its boundaries, so long as such regulation is at least as strin-*
35 *gent as that imposed by sections 7 through 12, and amendments*
36 *thereto. In such cases the more stringent local regulation shall con-*
37 *trol to the extent of any inconsistency between such regulation and*
38 *sections 7 through 12, and amendments thereto.*

39 *New Sec. 12. If any provision of sections 7 through 12, and*
40 *amendments thereto, or the application thereof to any person, thing*
41 *or circumstance is held invalid, such invalidity shall not affect the*
42 *provisions of application of sections 7 through 12, and amendments*
43 *thereto, that can be given effect without the invalid provision or*

1 ***application, and to this end the provisions of sections 7 through 12,***
2 ***and amendments thereto, are declared to be severable.***

3 Sec. ~~6~~ **13.** K.S.A. 65-530 is hereby amended to read as follows: 65-
4 530. (a) As used in this section:

5 (1) “Day care home” means a day care home as defined under Kansas
6 administrative regulation 28-4-113, a group day care home as defined
7 under Kansas administrative regulation 28-4-113 and a family day care
8 home as defined under K.S.A. 65-517 and amendments thereto.

9 (2) “Smoking” means possession of a lighted cigarette, cigar, pipe or
10 burning tobacco in any other form or device designed for the use of
11 tobacco.

12 (b) Smoking within any room, enclosed area or other enclosed space
13 of a facility or facilities of a day care home during a time when children
14 who are not related by blood, marriage or legal adoption to the person
15 who maintains the home are being cared for, as part of the operation of
16 the day care home, within the facility or facilities is hereby prohibited.
17 Nothing in this subsection shall be construed to prohibit smoking on the
18 premises of the day care home *10 feet away from the entryway* outside
19 the facility or facilities of a day care home, including but not limited to
20 porches, yards or garages.

21 (c) Each day care home registration certificate or license shall contain
22 a statement in bold print that smoking is prohibited within a room, en-
23 closed area or other enclosed space of the facility or facilities of the day
24 care home under the conditions specified in subsection (b). The state-
25 ment shall be phrased in substantially the same language as subsection
26 (b). The registration certificate or license shall be posted in a conspicuous
27 place in the facility or facilities.

28 (d) *In addition to the criminal penalties in K.S.A. 21-4010, and*
29 *amendments thereto*, the secretary of health and environment may levy a
30 civil fine under K.S.A. 65-526 and amendments thereto against any day
31 care home for a first or second violation of this section. A third or sub-
32 sequent violation shall be subject to the provisions of K.S.A. 65-523 and
33 amendments thereto.

34 Sec. ~~7~~ **14.** K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4017 and
35 65-530 and K.S.A. 2006 Supp. 20-350 are hereby repealed.

36 Sec. ~~8~~ **15.** This act shall take effect and be in force from and after
37 its publication in the statute book.