

## SENATE BILL No. 81

By Committee on Public Health and Welfare

1-22

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9 AN ACT enacting the Kansas nonsmoker protection act; repealing K.S.A.  
10 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and 21-4014 and re-  
11 pealing the existing sections.  
12

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

14 Section 1. (a) The provisions of this section shall be known and may  
15 be cited as the Kansas nonsmoker protection act.

16 (b) As used in this section:

17 (1) "Commercial motor vehicle" means a motor vehicle used on a  
18 highway in interstate or intrastate commerce to transport property when  
19 the vehicle:

20 (A) Has a gross weight rating, or gross vehicle weight or gross com-  
21 bination weight of 10,001 pounds or more; and

22 (B) is not used in transporting material found by the United States  
23 secretary of transportation to be hazardous under 49 U.S.C. 5103 and  
24 transported in a quantity requiring placarding under regulations pre-  
25 scribed by the United States secretary of transportation under 49 C.F.R.,  
26 subtitle B, chapter I, subchapter C, and is subject to the provisions of 49  
27 C.F.R. 397.13 as enacted on December 12, 1994.

28 (2) "Employee" means any person who performs any service on a  
29 full-time, part-time or contracted basis whether or not the person is de-  
30 nominated an employee, independent contractor or otherwise and  
31 whether or not the person is compensated or is a volunteer;

32 (3) "employer" means a person, business, partnership, association,  
33 the state of Kansas and its political subdivisions, corporation, including a  
34 municipal corporation, trust or nonprofit entity that employs the services  
35 of one or more individual persons;

36 (4) "enclosed area" means all space between a floor and ceiling that  
37 is enclosed on all sides by permanent or temporary walls or windows,  
38 exclusive of doorways, which extend from the floor to the ceiling. "En-  
39 closed area" includes a reasonable distance from any entrances, windows  
40 and ventilation systems so that persons entering or leaving the building  
41 or facility shall not be subjected to breathing tobacco smoke and so that  
42 tobacco smoke does not enter the building or facility through entrances,  
43 windows, ventilation systems or any other means;

- 1 (5) “medical care facility” means a doctor’s office, general hospital,  
2 special hospital, ambulatory surgery center or recuperation center, as de-  
3 fined by K.S.A. 65-425, and amendments thereto, and any psychiatric  
4 hospital licensed under K.S.A. 75-3307b, and amendments thereto;
- 5 (6) “person” means an individual, partnership, corporation, limited  
6 liability company, entity, association, governmental subdivision or unit of  
7 a governmental subdivision or a public or private organization of any  
8 character;
- 9 (7) “physically separated” means all space between a floor and ceiling  
10 which is enclosed on all sides by solid walls or windows, exclusive of door  
11 or passageway, and independently ventilated from smoke-free areas, so  
12 that air within permitted smoking areas does not drift or get vented into  
13 smoke-free areas;
- 14 (8) “place of employment” means an enclosed area under the control  
15 of a public or private employer that employees normally frequent during  
16 the course of employment, including office buildings, work areas, audi-  
17 toriums, employee lounges, restrooms, conference rooms, meeting  
18 rooms, classrooms, cafeterias, hallways, stairs, elevators, health care fa-  
19 cilities, private offices and vehicles owned and operated by the employer  
20 during working hours when the vehicle is occupied by more than one  
21 person. A private residence or vehicle is not a “place of employment”  
22 unless it is used as a licensed child care, adult day care or medical care  
23 facility;
- 24 (9) “public place” means an enclosed area of any place which the  
25 public is invited or in which the public is permitted, including airports,  
26 banks, common areas of multi-family housing facilities, such as apartment  
27 buildings and condominiums, entertainment venues, medical care facili-  
28 ties, hotel and motel common areas, laundromats, public transportation  
29 facilities, reception areas, restaurants, retail food establishments, retail  
30 service establishments, retail stores, schools, shopping malls, sports facil-  
31 ities, theaters and waiting rooms. A private residence or vehicle is not a  
32 “public place” unless it is used as a licensed child care, adult day care or  
33 medical care facility, taxi or other commercial vehicle for hire;
- 34 (10) “retail tobacco store” means a retail store that derives its largest  
35 category of sales from tobacco products and accessories. “Retail tobacco  
36 store” does not include grocery stores, convenience stores, gas stations,  
37 general retailers or similar retail establishments;
- 38 (11) “smoking” means inhaling, exhaling, burning or carrying or pos-  
39 sessed any lighted tobacco product, including cigars, cigarettes, pipe to-  
40 bacco and any other lighted tobacco product;
- 41 (12) “sports facilities” means enclosed areas of sports pavilions, sta-  
42 diums, gymnasiums, health spas, boxing arenas, swimming pools, roller  
43 and ice rinks, billiard halls, bowling alleys and other similar places where

- 1 members of the general public assemble to engage in physical exercise,  
2 participate in athletic competition or witness sporting events;
- 3 (13) “bar” means a legal age-restricted establishment that is primarily  
4 devoted to the serving of alcoholic beverages for consumption by guests  
5 on the premises and in which the serving of food is only incidental to the  
6 consumption of those beverages, including, but not limited to, taverns,  
7 nightclubs, cocktail lounges and cabarets; and
- 8 (14) “cigar bar” means an enclosed area that holds itself out to the  
9 public as a cigar bar, and in which:
- 10 (A) Access is denied to any person under the legal age for the pur-  
11 chase or sale of tobacco;
- 12 (B) cigars or tobacco products or both are sold for consumption on  
13 the premises; and
- 14 (C) sales of cigars and all tobacco products and sales or rentals of  
15 cigar accessories account for not less than 5% of the annual gross revenues  
16 of the business.
- 17 (c) Smoking is prohibited in all public places and places of employ-  
18 ment within the state of Kansas, except the following:
- 19 (1) Private residences, except when used as a licensed child care,  
20 adult day care or medical care facility;
- 21 (2) hotel and motel rooms that are rented to guests and are desig-  
22 nated as smoking rooms;
- 23 (3) retail tobacco stores that prohibit minors on the premises;
- 24 (4) nonenclosed areas of public spaces, outdoor patios, as long as  
25 tobacco smoke is not reasonably expected to enter areas where smoking  
26 is prohibited;
- 27 (5) bars;
- 28 (6) cigar bars;
- 29 (7) class A club licensed pursuant to K.S.A. 41-2601 et seq., and  
30 amendments thereto;
- 31 (8) private automobiles, except when used for the public transpor-  
32 tation of children or for transportation by a medical care facility or day  
33 care facility or when used as a taxi or other commercial vehicle for hire;
- 34 (9) all premises of any manufacturer, importer or wholesaler of to-  
35 bacco products, of any tobacco leaf dealer or processor and all tobacco  
36 storage facilities;
- 37 (10) physically separate smoking area or areas of a restaurant or a  
38 class B club licensed pursuant to K.S.A. 41-2601 et seq., and amendments  
39 thereto, if the owner chooses to provide such an area;
- 40 (11) a restaurant which has been designated by the owner as a totally  
41 smoking area, prohibits the entry of persons under 18 years of age at all  
42 times and complies with the notice provisions set out in subsection (f)(4);
- 43 (12) any casino or other establishment which operates class three

- 1 games, as defined in the 1991 version of 25 U.S.C. 2703;
- 2 (13) a benefit cigar dinner or other smoking event conducted specif-
- 3 ically and exclusively for charitable purposes;
- 4 (14) any location or premises used to conduct bingo games under
- 5 K.S.A. 79-4701 et seq., and amendments thereto;
- 6 (15) freight trains;
- 7 (16) commercial motor vehicles;
- 8 (17) an adult care home, as defined in K.S.A. 39-923, and amend-
- 9 ments thereto, provided that it gives notice to potential residents and
- 10 employees of its smoking policy prior to their admission or employment;
- 11 (18) any veterans administration hospital within the state;
- 12 (19) any Kansas soldiers' home established pursuant to K.S.A. 76-
- 13 1901 et seq., and amendments thereto, or veterans' home established
- 14 pursuant to K.S.A. 76-1951 et seq., and amendments thereto; and
- 15 (20) designated smoking areas in passenger trains.
- 16 (d) To protect the private property rights of all persons who own bars
- 17 and retail tobacco stores in this state, the state of Kansas finds and de-
- 18 termines a single statewide standard for smoking in enclosed areas that
- 19 are also public places to be a matter of statewide concern. It is declared
- 20 that this section preempts all municipal and county laws, charters, ordi-
- 21 nances and rules and regulations relating to smoking in the locations set
- 22 forth in subsection (b).
- 23 (e) Notwithstanding any other provision of this section, an owner,
- 24 operator, manager or other person or entity in control of an establish-
- 25 ment, facility or outdoor area may declare that entire establishment, fa-
- 26 cility or outdoor area as a nonsmoking place.
- 27 (f) Posting of signs and ashtray removal:
- 28 (1) "No smoking" signs or the international "no smoking" symbol,
- 29 consisting of a pictorial representation of a burning cigarette enclosed in
- 30 a red circle with a red bar across it, no smaller than 6 inches by 6 inches,
- 31 shall be clearly and conspicuously posted by the owner, operator, manager
- 32 or other person in control of that place identifying where smoking is
- 33 prohibited by this section and where complaints regarding violations may
- 34 be registered;
- 35 (2) every public place and place of employment where smoking is
- 36 prohibited by this section shall have posted at every entrance a conspic-
- 37 uous sign clearly stating that smoking is prohibited;
- 38 (3) all ashtrays shall be removed from any premise where smoking is
- 39 prohibited by this section by the owner, operator, manager or other per-
- 40 son having control of the area; and
- 41 (4) restaurants which are designated as totally smoking as provided
- 42 in subsection (c)(11) shall be conspicuously posted on the outside of the
- 43 business "This business is a totally smoking facility. Persons under 18

1 years of age are prohibited. Persons entering are advised that smoking is  
2 permitted at all locations in this facility”.

3 (g) No employer may discharge or retaliate against an employee be-  
4 cause that employee exercised any rights afforded by this section or re-  
5 ports or attempts to prosecute a violation of this section.

6 (h) An owner, manager, operator or employee of a place regulated  
7 by this section shall inform any person who is smoking in violation of this  
8 section that smoking is not allowed and request that the person stop  
9 smoking immediately.

10 (i) This section does not create any new private right of action nor  
11 does it extinguish any existing common law causes of action.

12 (j) Any person found guilty of smoking in violation of this section is  
13 guilty of a misdemeanor punishable by a fine of not less than \$50 and not  
14 more than \$300 for each violation. Any person found guilty of failing to  
15 post signs as required by this act, is guilty of a misdemeanor punishable  
16 by a fine of not more than \$50. In addition, the department of health and  
17 environment, or local department of health, may institute an action in  
18 any court of competent jurisdiction to enjoin repeated violations of this  
19 act.

20 (k) If any provision of this section or the application thereof to any  
21 person, thing or circumstance is held invalid, such invalidity shall not  
22 affect the provisions of application of this section that can be given effect  
23 without the invalid provision or application, and to this end the provisions  
24 of the section are declared to be severable.

25 Sec. 2. K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and 21-  
26 4014 are hereby repealed.

27 Sec. 3. This act shall take effect and be in force from and after its  
28 publication in the statute book.