

HOUSE BILL No. 2642

By Committee on Health and Human Services

2-3

9 AN ACT enacting the Kansas nonsmoker protection act; amending
10 K.S.A. 2009 Supp. 79-3321 and 79-3391 and repealing the existing
11 sections; also repealing K.S.A. 21-4009, 21-4010, 21-4011, 21-4012,
12 21-4013 and 21-4014 and repealing the existing sections.
13

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

15 New Section 1. Sections 1 through 10, and amendments thereto,
16 shall be known and may be cited as the Kansas nonsmoker protection act.

17 New Sec. 2. As used in this act: (a) “Adult day care” shall have the
18 meaning ascribed to it in K.S.A. 39-923 and amendments thereto.

19 (b) “Employee” means any person who performs any service on a
20 full-time, part-time or contracted basis whether or not the person is de-
21 nominated an employee, independent contractor or otherwise and
22 whether or not the person is compensated or is a volunteer;

23 (c) “employer” means a person, business, partnership, association,
24 the state of Kansas and its political subdivisions, corporation, including a
25 municipal corporation, trust or nonprofit entity that employs the services
26 of one or more individual persons;

27 (d) “enclosed area” means all space between a floor and ceiling that
28 is enclosed on all sides by permanent or temporary walls or windows,
29 exclusive of doorways, which extend from the floor to the ceiling. “En-
30 closed area” also includes a reasonable distance from any entrances, win-
31 dows and ventilation systems so that persons entering or leaving the build-
32 ing or facility shall not be subjected to breathing tobacco smoke and so
33 that tobacco smoke does not enter the building or facility through en-
34 trances, windows, ventilation systems or any other means;

35 (e) “medical care facility” means a doctor’s office, general hospital,
36 special hospital, ambulatory surgery center or recuperation center, as de-
37 fined by K.S.A. 65-425 and amendments thereto. “Medical care facility”
38 also includes any psychiatric hospital licensed under K.S.A. 75-3307b and
39 amendments thereto;

40 (f) “motor vehicle” shall have the meaning ascribed to it in K.S.A. 40-
41 3103 and amendments thereto.

42 (g) “person” means an individual, partnership, corporation, limited
43 liability company, entity, association, governmental subdivision or unit of

1 a governmental subdivision or a public or private organization of any
2 character;

3 (h) “physically separated” means all space between a floor and ceiling
4 which is enclosed on all sides by solid walls or windows, exclusive of a
5 door or passageway, which is independently ventilated from smoke-free
6 areas, so that air within permitted smoking areas does not drift or get
7 vented into smoke-free areas;

8 (i) “place of employment” means an enclosed area under the control
9 of a public or private employer that employees normally frequent during
10 the course of employment, including, but not limited to, any office build-
11 ing, work area, auditorium, employee lounge, restroom, conference room,
12 meeting room, classroom, cafeteria, hallway, stair, elevator, health care
13 facility or private office. The term “place of employment” includes any
14 vehicle owned and operated by the employer during working hours when
15 such vehicle is occupied by more than one person. For the purposes of
16 this section, a private residence is not a “place of employment” unless
17 such residence is used as a licensed child care facility, adult day care or
18 medical care facility;

19 (j) “public place” means an enclosed area of any place to which the
20 public is invited or in which the public is permitted, including, but not
21 limited to, any airport, bank, common area of a multi-family housing fa-
22 cility, such as any apartment building and condominium, entertainment
23 venue, medical care facility, hotel and motel common area, laundromat,
24 public transportation facility, reception area, restaurant, retail food estab-
25 lishment, retail service establishment, retail store, school, shopping mall,
26 sports facility, theater and waiting room. A private residence or vehicle is
27 not a “public place” unless it is used as a licensed child care, adult day
28 care or medical care facility. The term “public place” does not include
29 any taxi or other commercial vehicle for hire;

30 (k) “retail tobacco store” means a retail store that derives not less
31 than 50% of the annual gross revenues of the business from sales of cigars
32 and all tobacco products and sales or rentals of cigar accessories. The
33 term “retail tobacco store” does not include any grocery store, conven-
34 ience store, gas station, general retailer or similar retail establishment;

35 (l) “smoking” means inhaling, exhaling, burning or carrying or pos-
36 sessed any lighted tobacco product, including any cigar, cigarette, pipe
37 tobacco and any other lighted tobacco product.

38 New Sec. 3. Smoking is prohibited in all public places and places of
39 employment within the state of Kansas, except the following:

40 (a) Any private residence, except when used as a licensed child care,
41 adult day care or medical care facility.

42 (b) Any hotel and motel room that is rented to guests and is desig-
43 nated as a smoking room. The number of designated smoking rooms in

1 a hotel or motel shall not exceed 20% of the total number of rooms in
2 such hotel or motel.

3 (c) Any retail tobacco store that prohibits minors on the premises.

4 (d) Any non-enclosed areas of a public space, including any outdoor
5 patio or other outdoor space.

6 (e) Any privately owned motor vehicle, except when used for the
7 public transportation of children or for transportation by a medical care
8 facility or day care facility or when used as a taxi or other commercial
9 vehicle for hire.

10 (f) All premises of any manufacturer, importer or wholesaler of to-
11 bacco products, of any tobacco leaf dealer or processor and all tobacco
12 storage facilities.

13 (g) Any physically separate smoking area or areas of any of the
14 following:

15 (1) A food service establishment as defined by K.S.A. 36-501 and
16 amendments thereto; (2) a class A club licensed pursuant to K.S.A. 41-
17 2601 et seq., and amendments thereto; (3) a class B club licensed pur-
18 suant to K.S.A. 41-2601 et seq., and amendments thereto; (4) any casino
19 or other establishment which operates class (3) or (2) games, as defined
20 in the 1991 version of 25 U.S.C. 2703; or

21 (5) any drinking establishment as defined in K.S.A. 41-2601, and
22 amendments thereto, if the owner chooses to provide such an area.

23 (h) (1) The entirety of any facility which is:

24 (A) A food service establishment as defined by K.S.A. 36-501 and
25 amendments thereto; (B) a class A club licensed pursuant to K.S.A. 41-
26 2601 et seq., and amendments thereto; (C) a class B club licensed pur-
27 suant to K.S.A. 41-2601 et seq., and amendments thereto; (D) any casino
28 or other establishment which operates class (3) or (2) games, as defined
29 in the 1991 version of 25 U.S.C. 2703; or

30 (E) any drinking establishments as defined in K.S.A. 41-2601 and
31 amendments thereto.

32 (2) The owner of a facility listed in paragraph (1) of this subsection
33 may elect to prohibit any person younger than 18 years of age during any
34 day, or portion thereof, from being admitted to such facility when such
35 facility utilizes the smoking exemption authorized by this subsection to
36 designate the entire facility as a totally smoking area. When a facility has
37 been designated as a totally smoking area, it shall post a sign at each
38 entrance to the facility stating that the facility is a totally smoking area
39 and that no person under the age of 18 years shall be admitted to the
40 facility. The signs required by this paragraph shall comply with and be in
41 addition to the signs required by section 6 and amendments thereto.

42 (i) Any benefit cigar dinner or other smoking event conducted spe-
43 cifically and exclusively for charitable purposes by an organization which

1 is organized not for profit and which qualifies under section 501(c)(3) of
2 the federal internal revenue code of 1986.

3 New Sec. 4. Any facility which desires to utilize an exemption pur-
4 suant to either subsection (g) or subsection (h) of section 3, and amend-
5 ments thereto, shall pay an annual fee in the amount of \$1 per square
6 foot of space designated as a smoking area pursuant to such exemptions.
7 The fee required by this section shall be paid to:

8 (a) The city if the facility is located within the boundaries of the city;
9 (b) the county if the facility is not located within the boundaries of
10 the city.

11 Such fee shall be paid in accordance with requirements designated by
12 a governing body of the city or county.

13 New Sec. 5. To protect the private property rights of all persons who
14 own property or businesses in this state, the state of Kansas finds and
15 determines a single statewide standard for smoking in enclosed areas that
16 are also public places to be a matter of statewide concern. It is declared
17 that this act preempts all municipal and county laws, charters, ordinances
18 and rules and regulations relating to smoking in the locations set forth in
19 this act.

20 New Sec. 6. (a) (1) At every entrance to each public place and to
21 each place of employment where smoking is prohibited by this act, there
22 shall be posted a conspicuous sign clearly stating that smoking is prohib-
23 ited. The sign shall contain either the term "No Smoking" or the inter-
24 national "no smoking symbol" consisting of a pictorial representation of
25 a burning cigarette enclosed in a red circle with a red bar across it.

26 (2) The sign required by paragraph (1) shall:

27 (A) Be posted by the owner, operator, manager or other person in
28 control of the public place or place of employment.

29 (B) Be no smaller than 4 inches by 4 inches in size.

30 (C) Clearly identify where smoking is prohibited by this act.

31 (D) Clearly state where complaints regarding violations may be made
32 or registered.

33 (b) All ashtrays shall be removed by the owner, operator, manager or
34 other person having control of the area from any premises where smoking
35 is prohibited by this act.

36 (c) If pursuant to subsection (h) of section 3, and amendments
37 thereto, the entirety of any facility has been designated as a totally smok-
38 ing facility, there shall be a conspicuous sign posted on the outside of the
39 business clearly stating:

40 "This business is a totally smoking facility. Persons under 18 years of
41 age are prohibited. Persons entering are advised that smoking is permit-
42 ted at all locations in this facility."

43 New Sec. 7. (a) No employer may discharge or retaliate against an

1 employee because that employee exercised any rights afforded by this act
2 or reports or attempts to prosecute a violation of this act.

3 (b) An owner, manager, operator or employee of a place regulated
4 by this act shall inform any person who is smoking in violation of this act
5 that smoking is not allowed and request that the person stop smoking
6 immediately.

7 (c) This act does not create any new private right of action nor does
8 it extinguish any existing common law causes of action.

9 New Sec. 8. (a) Any person found guilty of smoking in violation of
10 this act is guilty of a misdemeanor punishable by a fine of not less than
11 \$50 and not more than \$300 for each violation.

12 (b) Any person found guilty of failing to post signs as required by this
13 act, is guilty of a misdemeanor punishable by a fine of not more than \$50.

14 (c) In addition, the Kansas department of health and environment or
15 a local department of health may institute an action in any court of com-
16 petent jurisdiction to enjoin repeated violations of this act.

17 (d) The district courts of Kansas shall have jurisdiction to restrain
18 violations of this act by injunction without the institution of criminal
19 proceedings.

20 New Sec. 9. It shall be unlawful for any person to smoke or be smok-
21 ing in any motor vehicle which is occupied by more than one person.

22 New Sec. 10. If any provision of this act or the application thereof
23 to any person, thing or circumstance is held invalid, such invalidity shall
24 not affect other provisions or applications of this act which can be given
25 effect without the invalid provision or application, and to this end the
26 provisions of the act are declared to be severable.

27 Sec. 11. K.S.A. 2009 Supp. 79-3321 is hereby amended to read as
28 follows: 79-3321. It shall be unlawful for any person:

29 (a) To possess, except as otherwise specifically provided by this act,
30 more than 200 cigarettes without the required tax indicia being affixed as
31 herein provided.

32 (b) To mutilate or attach to any individual package of cigarettes any
33 stamp that has in any manner been mutilated or that has been heretofore
34 attached to a different individual package of cigarettes or to have in pos-
35 session any stamps so mutilated.

36 (c) To prevent the director or any officer or agent authorized by law,
37 to make a full inspection for the purpose of this act, of any place of
38 business and all premises connected thereto where cigarettes are or may
39 be manufactured, sold, distributed, or given away.

40 (d) To use any artful device or deceptive practice to conceal any vi-
41 olation of this act or to mislead the director or officer or agent authorized
42 by law in the enforcement of this act.

43 (e) Who is a dealer to fail to produce on demand of the director or

- 1 any officer or agent authorized by law any records or invoices required
2 to be kept by such person.
- 3 (f) Knowingly to make, use, or present to the director or agent thereof
4 any falsified invoice or falsely state the nature or quantity of the goods
5 therein invoiced.
- 6 (g) Who is a dealer to fail or refuse to keep and preserve for the time
7 and in the manner required herein all the records required by this act to
8 be kept and preserved.
- 9 (h) To wholesale cigarettes to any person, other than a manufacturer's
10 salesperson, retail dealer or wholesaler who is:
- 11 (1) Duly licensed by the state where such manufacturer's salesperson,
12 retail dealer or wholesaler is located, or
- 13 (2) exempt from state licensing under applicable state or federal laws
14 or court decisions including any such person operating as a retail dealer
15 upon land allotted to or held in trust for an Indian tribe recognized by
16 the United States bureau of Indian affairs.
- 17 (i) To have in possession any evidence of tax indicia provided for
18 herein not purchased from the director.
- 19 (j) To fail or refuse to permit the director or any officer or agent
20 authorized by law to inspect a carrier transporting cigarettes.
- 21 (k) To vend small cigars, or any products so wrapped as to be con-
22 fused with cigarettes, from a machine vending cigarettes, nor shall a vend-
23 ing machine be so built to vend cigars or products that may be confused
24 with cigarettes, be attached to a cigarette vending machine.
- 25 (l) To sell, furnish or distribute cigarettes or tobacco products to any
26 person under 18 years of age.
- 27 (m) Who is under 18 years of age to purchase or attempt to purchase
28 cigarettes or tobacco products.
- 29 (n) Who is under 18 years of age to possess or attempt to possess
30 cigarettes or tobacco products.
- 31 (o) To sell cigarettes to a retailer or at retail that do not bear Kansas
32 tax indicia or upon which the Kansas cigarette tax has not been paid.
- 33 (p) To sell cigarettes without having a license for such sale as provided
34 herein.
- 35 (q) To sell a vending machine without having a vending machine dis-
36 tributor's license.
- 37 (r) Who is a retail dealer to fail to post and maintain in a conspicuous
38 place in the dealer's establishment the following notice: "By law, ciga-
39 rettes and tobacco products may be sold only to persons 18 years of age
40 and older."
- 41 (s) To distribute samples within 500 feet of any school when such
42 facility is being used primarily by persons under 18 years of age unless
43 the sampling is: (1) In an area to which persons under 18 years of age are

1 denied access; (2) in or at a retail location where cigarettes and tobacco
2 products are the primary commodity offered for sale at retail; or (3) at or
3 adjacent to an outdoor production, repair or construction site or facility.

4 (t) To sell cigarettes or tobacco products by means of a vending ma-
5 chine in any establishment, or portion of an establishment, which is open
6 to minors, except that this subsection shall not apply to:

7 (1) The installation and use by the proprietor of the establishment,
8 or by the proprietor's agents or employees, of vending machines behind
9 a counter, or in some place in such establishment, or portion thereof, to
10 which minors are prohibited by law from having access;

11 (2) the installation and use of a vending machine in a commercial
12 building or industrial plant, or portions thereof, where the public is not
13 customarily admitted and where machines are intended for the sole use
14 of adult employees employed in the building or plant; or

15 (3) a vending machine which has a lock-out device which is inoper-
16 able in the continuous standby mode and which requires manual activa-
17 tion by the person supervising the operation of the machine each time
18 cigarettes or tobacco products are purchased from the machine.

19 (u) To sell or distribute in this state; to acquire, hold, own, possess
20 or transport for sale or distribution in this state; or to import or cause to
21 be imported, into this state for sale or distribution in this state:

22 (1) Any cigarettes the package of which (A) bears any statement, la-
23 bel, stamp, sticker or notice indicating that the manufacturer did not
24 intend the cigarettes to be sold, distributed or used in the United States,
25 including but not limited to, labels stating "For Export Only", "U.S. Tax-
26 Exempt", "For Use Outside U.S." or similar wording; or (B) does not
27 comply with (i) all requirements imposed by or pursuant to federal law
28 regarding warnings and other information on packages of cigarettes man-
29 ufactured, packaged or imported for sale, distribution or use in the United
30 States, including but not limited to the precise warning labels specified
31 in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and
32 (ii) all federal trademark and copyright laws;

33 (2) any cigarettes imported into the United States in violation of 26
34 U.S.C. 5754 or any other federal law, or federal regulations implementing
35 such laws;

36 (3) any cigarettes that such person otherwise knows or has reason to
37 know the manufacturer did not intend to be sold, distributed or used in
38 the United States; or

39 (4) any cigarettes for which there has not been submitted to the sec-
40 retary of the U.S. department of health and human services the list or
41 lists of the ingredients added to tobacco in the manufacture of such cig-
42 arettes required by the federal cigarette labeling and advertising act, 15
43 U.S.C. 1335a.

- 1 (v) To alter the package of any cigarettes, prior to sale or distribution
2 to the ultimate consumer, so as to remove, conceal or obscure:
- 3 (1) Any statement, label, stamp, sticker or notice described in sub-
4 section (u) of K.S.A. 79-3321, and amendments thereto;~~or~~
- 5 (2) any health warning that is not specified in, or does not conform
6 with, the requirements of, the federal cigarette labeling and advertising
7 act, 15 U.S.C. 1333.
- 8 (w) To affix any stamp required pursuant to K.S.A. 79-3311, and
9 amendments thereto, to the package of any cigarettes described in sub-
10 section (u) or altered in violation of subsection (v).
- 11 (x) *To permit a person who is under 18 years of age to smoke or be*
12 *smoking in violation of the Kansas nonsmoker protection act, and amend-*
13 *ments thereto; or*
- 14 (y) *who is under 18 years of age to smoke or be smoking in violation*
15 *of the Kansas nonsmoker protection act.*
- 16 Sec. 12. K.S.A. 2009 Supp. 79-3391 is hereby amended to read as
17 follows: 79-3391. (a) In addition to or in lieu of any other civil or criminal
18 penalty provided by law, the secretary of revenue or the secretary's des-
19 ignee, upon a finding that a licensee under this act has violated any pro-
20 vision of this act or any provision of any rule and regulation of the sec-
21 retary of revenue adopted pursuant to this act shall impose on such
22 licensee a civil fine not exceeding \$1,000 for each violation.
- 23 (b) It shall be unlawful for any person, directly or indirectly, to: (1)
24 Sell, give or furnish any cigarettes or tobacco products to any person
25 under 18 years of age; ~~or~~ (2) buy any cigarettes or tobacco products for
26 any person under 18 years of age; *or permit any person under 18 years*
27 *of age to smoke any cigarettes or tobacco products in violation of the*
28 *Kansas nonsmokers protection act, and amendments thereto.* In deter-
29 mining the fine to be imposed under this subsection by a licensed retail
30 dealer whose employee sold, furnished or distributed the cigarettes or
31 tobacco products, the secretary of revenue or the secretary's designee
32 shall consider it to be a mitigating circumstance if the employee had
33 completed a training program, approved by the secretary of revenue or
34 the secretary's designee, in avoiding sale, furnishing or distributing of
35 cigarettes and tobacco products to persons under 18 years of age.
- 36 (c) No fine shall be imposed pursuant to this section except upon the
37 written order of the secretary of revenue or the secretary's designee to
38 the licensee who committed the violation. Such order shall state the vi-
39 olation, the fine to be imposed and the right of the licensee to appeal the
40 order. Such order shall be subject to appeal and review in the manner
41 provided by the Kansas administrative procedure act.
- 42 (d) Any fine collected pursuant to this section shall be remitted to
43 the state treasurer in accordance with the provisions of K.S.A. 75-4215,

1 and amendments thereto. Upon receipt of each such remittance, the state
2 treasurer shall deposit the entire amount in the state treasury to the credit
3 of the cigarette and tobacco products regulation fund.

4 (e) There is hereby created, in the state treasury, the cigarette and
5 tobacco products regulation fund. Moneys in the fund shall be expended
6 only for the enforcement of this act and rules and regulations adopted
7 pursuant to this act. Such expenditures shall be made in accordance with
8 appropriation acts upon warrants of the director of accounts and reports
9 issued pursuant to vouchers approved by the secretary of revenue or a
10 person designated by the secretary.

11 (f) If a person violates subsection (b) for a second or subsequent
12 occurrence within a three-year period, the secretary may impose a grad-
13 uated fine upon such person for the second or subsequent occurrence.
14 For the purposes of imposing a fine under this section, if three or more
15 years have elapsed since a person has been found to have violated the
16 provisions of subsection (b), such person shall be treated as never having
17 violated subsection (b).

18 Sec. 13. K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and 21-
19 4014 and K.S.A. 2009 Supp. 79-3321 and 79-3391 are hereby repealed.

20 Sec. 14. This act shall take effect and be in force from and after its
21 publication in the statute book.