

SESSION OF 2007

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 37**

As Amended Without Recommendation by  
Senate Committee on Judiciary

**Brief\***

SB 37, as amended, would ban smoking in any indoor area as defined in the bill and within 10 feet of any operable window and ventilation system of any indoor area where smoking is banned. An indoor area means any enclosed area or portion thereof and includes, but is not limited to:

- Public places;
- Public buildings;
- Public meetings;
- Taxicabs and limousines;
- Gymnasiums;
- Child day care facilities licensed by the Kansas Department of Health and Environment;
- Medical care facilities;
- Any place of employment not exempted by the bill;
- Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
- Restrooms, lobbies and other common areas in hotels and motels and in at least 75 percent of the sleeping quarters within a hotel or motel;
- common areas of publicly owned housing facilities, not including any resident's private residential quarters; and
- The entryways of all buildings and facilities listed above.

Smoking in an indoor area would be a class C nonperson misdemeanor punishable by a fine of not more than \$200 for a first conviction. Upon a second conviction within a calendar year of the first conviction, the fine would not be more than \$300, and upon a third or subsequent conviction within a calendar year, the fine would not be more than \$500. Violations that occur on different days would be deemed separate violations. Additionally, the Kansas Department of Health and Environment (KDHE) would be authorized to levy a civil fine

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

against any day care home for a violation of this section and would be required to suspend a license upon a third or subsequent conviction.

Proprietors or other persons in charge of the public place would be required to post in a conspicuous place signs clearly stating smoking is prohibited by state law. Failure to post signs as required would be a class C nonperson misdemeanor punishable by a fine of not more than \$50. Additionally, KDHE would be authorized to initiate a civil action to enjoin repeated violations of this section.

Proprietors or other persons in charge of a cigar-tobacco bar would be required to post in a conspicuous place a sign stating smoking is allowed but that children under 18 years of age are prohibited on the premises.

The bill exempts from the ban the following:

- Private homes and private residences unless used for a licensed child care or day care;
- Private motor vehicles unless used for public transportation of children by a licensed health care or day care facility;
- Limousines under private hire;
- Less than 25 percent of hotel or motel rooms rented to one or more guests;
- A benefit cigar dinner for charitable purposes;
- Any retail tobacco business;
- A cigar-tobacco bar;
- The outdoor area of any business beyond 10 feet of any entrance or exit of the business;
- Any Class A club;
- Any adult care home licensed by the Secretary of Aging;
- Any veterans administration hospital within the state;
- Any Kansas Soldiers' Home or Veterans' Home;
- Designated smoking areas in passenger trains;
- Freight trains; or
- Commercial motor vehicles as defined in the bill.

The bill would provide the board of county commissions of any county authority to exempt the county from the provisions of the bill by resolution. The resolution would be required to be published for two consecutive weeks and would not take effect until 30 days after its final publication. If five percent of the qualified electors of the county file a protest petition demanding a vote of the electors, the resolution would not take effect until the question of whether the county should allow

smoking in public places is approved by a majority of the electors voting.

Smoking would be permitted in a public place or in a public meeting in designated smoking areas in any county exempting itself from the provisions of the bill. Proprietors or other persons in charge of the public place would be required to post, in a conspicuous place, signs clearly stating smoking is prohibited by state law and signs clearly stating smoking is permitted on the premises in a designated area. Designated areas permitting smoking under the provisions of the bill would be required to have physical barriers and ventilation systems. Any person convicted of smoking in a non-designated area would be subject to an unclassified misdemeanor and a fine of not more than \$20 for each violation.

Cities would not be prevented from regulating smoking within its boundaries so long as its regulation is at least as stringent as the regulation imposed by the county exempting itself from the provisions of the bill.

## **Background**

The Committee amended the bill as follows:

- Amended the definition of food service establishment by striking “the principal business is” and inserting “more than 50 percent of its revenue is derived from;
- Exempted Class A clubs rather than “private” clubs for the provisions of the bill;
- Exempted any adult care home licensed by the Department of Aging;
- Exempted any veterans administration hospital within the state;
- Exempted the Kansas Veterans’ Home and the Soldiers’ Home;
- Exempted designated smoking areas in passenger trains;
- Exempted freight trains;
- Exempted a benefit cigar dinner for charitable purposes;
- Exempted commercial motor vehicles as defined in the bill;
- Provided for a procedure for a county to exempt the county from the provisions of the bill; and
- Added other amendments of a technical nature.

The Committee passed the bill without recommendation.

The proponents of the bill included Senator David Wysong; Dr. Jon Hauxwell, President of Tobacco Free Kansas Coalition, Inc.; Dr. Karen Kelly, Deputy Director of the University of Kansas Cancer Center; Dr. Howard Rodenberg, Director of Health for the Kansas Department of Health and Environment; Dr. James Hamilton, Jr., Chair of the Commission on Cancer; Dr. Dennis Teitze, Kansas Academy of Family Physicians; Dr. Stephen Bruner, Clean Air Lawrence; Linda DeCoursey, Advocacy Director of the American Heart Association; Dan Morin, Director of Government Affairs of the Kansas Medical Society; Lisa Benlon, American Cancer Society; and Terri Roberts, Kansas State Nurses Association. Michelle Bernth, American Lung Association, provided written testimony in support of the bill.

The opponents of the bill included Ron Hein, Reynolds American, Inc.; Marlee Carpenter, Vice President of Government Affairs for the Kansas Chamber; Chuck Magerl, Owner of Wheatfields Bakery and Free State Brewery; Philip Bradley, Kansas Licensed Beverage Association; Ed Nelson, President of the Kansas City Business Rights Coalition; Jeff Martin, Operations Manager of Armour Amusement; Tom Conroy, Owner of Conroy's Pub; Jim Fager, Manager of Tanner's Bar and Grille; and Alan Cobb, State Director of Americans for Prosperity. The following individuals provided written testimony in opposition to the bill: Joe Vise, Citizen; Jerry and Sue Nerverve, Owners of the Red Lion Tavern; Kim Moffitt, Owner Twin City Tavern; Vic Allred, Owner of JAZZ; Bill Hannegan, Citizen; Joni Bocelewatz, Bar Owner; and Joseph Bolduc, President of the Kansas Business Rights Association.

Joann Corpstein, Chief Legal Counsel of the Kansas Department on Aging, provided neutral testimony. Ron Hein, Kansas Restaurant and Hospitality Association, and Tom Intfen, Paddy O'Quigley's, provided neutral written testimony.

The fiscal note from the Division of Budget states that, according to the Office of Judicial Administration, there would have been a fiscal effect on the agency with the provision in the original bill on distribution of the fee collected for violations of the smoking law. However, since that provision was stricken by the Committee, it will not require the clerical time originally estimated for the fiscal note.

The Office of the Attorney General states that the passage of the bill would not have a fiscal effect on its operations. The League of Kansas Municipalities and the Kansas Association of Counties state that the fiscal effect of the bill cannot be estimated.