

**SENATE BILL No. 176**

By Committee on Federal and State Affairs

2-4

1 AN ACT concerning the Kansas indoor clear air act; prohibiting smoking  
2 on the gaming floor of a lottery gaming facility or racetrack gaming  
3 facility; amending the definition of smoking to include the use of an  
4 electronic cigarette and smoking of marijuana; amending K.S.A. 21-  
5 6109 and 21-6110 and repealing the existing sections.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 21-6109 is hereby amended to read as follows: 21-  
9 6109. As used in K.S.A. 21-6109 through 21-6116, and amendments  
10 thereto:

11 (a) "Access point" means the area within a ten foot radius outside of  
12 any doorway, open window or air intake leading into a building or facility  
13 that is not exempted pursuant to K.S.A. 21-6110(d), and amendments  
14 thereto.

15 (b) "Bar" means any indoor area that is operated and licensed for the  
16 sale and service of alcoholic beverages, including alcoholic liquor as  
17 defined in K.S.A. 41-102, and amendments thereto, or cereal malt  
18 beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-  
19 premises consumption.

20 (c) *"Electronic cigarette" means the same as defined in the Kansas*  
21 *cigarette and tobacco products act.*

22 (d) "Employee" means any person who is employed by an employer  
23 in consideration for direct or indirect monetary wages or profit and any  
24 person who volunteers their services for a nonprofit entity.

25 ~~(d)~~(e) "Employer" means any person, partnership, corporation,  
26 association or organization, including municipal or nonprofit entities, that  
27 employs one or more individual persons.

28 ~~(e)~~(f) "Enclosed area" means all space between a floor and ceiling  
29 that is enclosed on all sides by solid walls, ~~windows or doorways that~~  
30 ~~extend from the floor to the ceiling, including all space therein screened by~~  
31 ~~partitions that do not extend to the ceiling or are not solid or similar~~  
32 ~~structures. For purposes of this section, the following shall not be~~  
33 ~~considered an "enclosed area": or windows, whether open or closed. A~~  
34 ~~wall includes any retractable divider, garage door or other physical~~  
35 ~~barrier, whether temporary or permanent and whether or not containing~~  
36 ~~openings of any kind~~

1       ~~(1) Rooms or areas, enclosed by walls, windows or doorways, having~~  
2 ~~neither a ceiling nor a roof and that are completely open to the elements~~  
3 ~~and weather at all times; and~~

4       ~~(2) rooms or areas, enclosed by walls, fences, windows or doorways~~  
5 ~~and a roof or ceiling, having openings that are permanently open to the~~  
6 ~~elements and weather and that comprise an area that is at least 30% of the~~  
7 ~~total perimeter wall area of such room or area.~~

8       ~~(f)~~(g) "Food service establishment" means any place in which food is  
9 served or is prepared for sale or service on the premises. Such term shall  
10 include, but not be limited to, fixed or mobile restaurants, coffee shops,  
11 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich  
12 shops, soda fountains, taverns, private clubs, roadside kitchens,  
13 commissaries and any other private, public or nonprofit organization or  
14 institution routinely serving food and any other eating or drinking  
15 establishment or operation where food is served or provided for the public  
16 with or without charge.

17       ~~(g)~~(h) "Gaming floor" means the area of a lottery gaming facility or  
18 racetrack gaming facility, as those terms are defined in K.S.A. 74-8702,  
19 and amendments thereto, where patrons engage in Class III gaming. The  
20 gaming floor shall not include any areas used for accounting, maintenance,  
21 surveillance, security, administrative offices, storage, cash or cash  
22 counting, records, food service, lodging or entertainment, except that the  
23 gaming floor may include a bar where alcoholic beverages are served so  
24 long as the bar is located entirely within the area where Class III gaming is  
25 conducted.

26       ~~(h)~~(i) "*Marijuana*" means the same as defined in K.S.A. 65-4101, and  
27 amendments thereto.

28       (j) "Medical care facility" means a physician's office, general  
29 hospital, special hospital, ambulatory surgery center or recuperation center,  
30 as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric  
31 hospital licensed under K.S.A. 39-2001 et seq., and amendments thereto.

32       ~~(i)~~(k) "Outdoor recreational facility" means a hunting, fishing,  
33 shooting or golf club, business or enterprise operated primarily for the  
34 benefit of its owners, members and their guests and not normally open to  
35 the general public.

36       ~~(j)~~(l) "Place of employment" means any enclosed area under the  
37 control of a public or private employer, including, but not limited to, work  
38 areas, auditoriums, elevators, private offices, employee lounges and  
39 restrooms, conference and meeting rooms, classrooms, employee  
40 cafeterias, stairwells and hallways, that is used by employees during the  
41 course of employment. For purposes of this section, a private residence  
42 shall not be considered a "place of employment" unless such residence is  
43 used as a day care home, as defined in K.S.A. 65-530, and amendments

1 thereto.

2 ~~(k)~~(m) "Private club" means an outdoor recreational facility operated  
3 primarily for the use of its owners, members and their guests that in its  
4 ordinary course of business is not open to the general public for which use  
5 of its facilities has substantial dues or membership fee requirements for its  
6 members.

7 ~~(h)~~(n) "Public building" means any building owned or operated by:

8 (1) The state, including any branch, department, agency, bureau,  
9 commission, authority or other instrumentality thereof;

10 (2) any county, city, township, other political subdivision, including  
11 any commission, authority, agency or instrumentality thereof; or

12 (3) any other separate corporate instrumentality or unit of the state or  
13 any municipality.

14 ~~(m)~~(o) "Public meeting" means any meeting open to the public  
15 pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other  
16 law of this state.

17 ~~(n)~~(p) "Public place" means any enclosed areas open to the public or  
18 used by the general public including, but not limited to: Banks, bars, food  
19 service establishments, retail service establishments, retail stores, public  
20 means of mass transportation, passenger elevators, health care institutions  
21 or any other place where health care services are provided to the public,  
22 medical care facilities, educational facilities, libraries, courtrooms, public  
23 buildings, restrooms, grocery stores, school buses, museums, theaters,  
24 auditoriums, arenas and recreational facilities. For purposes of this section,  
25 a private residence shall not be considered a "public place" unless such  
26 residence is used as a day care home, as defined in K.S.A. 65-530, and  
27 amendments thereto.

28 ~~(o)~~(q) "Smoking" means:

29 (1) Possession of a lighted cigarette, cigar, pipe or burning tobacco in  
30 any other form or device designed for the use of tobacco;

31 (2) *the use of an electronic cigarette; or*

32 (3) *burning marijuana in any form or device designed for the use of*  
33 *marijuana.*

34 ~~(p)~~(r) "Tobacco shop" means any indoor area operated primarily for  
35 the retail sale of tobacco, tobacco products or smoking devices or  
36 accessories, and that derives not less than 65% of its gross receipts from  
37 the sale of tobacco.

38 ~~(q)~~(s) "Substantial dues or membership fee requirements" means  
39 initiation costs, dues or fees proportional to the cost of membership in  
40 similarly-situated outdoor recreational facilities that are not considered  
41 nominal and implemented to otherwise avoid or evade restrictions of a  
42 statewide ban on smoking.

43 Sec. 2. K.S.A. 21-6110 is hereby amended to read as follows: 21-

1 6110. (a) It shall be unlawful, with no requirement of a culpable mental  
2 state, to smoke in an enclosed area or at a public meeting including, but  
3 not limited to:

4 (1) Public places;  
5 (2) taxicabs and limousines;  
6 (3) restrooms, lobbies, hallways and other common areas in public  
7 and private buildings, condominiums and other multiple-residential  
8 facilities;

9 (4) restrooms, lobbies and other common areas in hotels and motels  
10 and in at least 80% of the sleeping quarters within a hotel or motel that  
11 may be rented to guests;

12 (5) access points of all buildings and facilities not exempted pursuant  
13 to subsection (d); and

14 (6) any place of employment.

15 (b) Each employer having a place of employment that is an enclosed  
16 area shall provide a smoke-free workplace for all employees. Such  
17 employer shall also adopt and maintain a written smoking policy which  
18 shall prohibit smoking without exception in all areas of the place of  
19 employment. Such policy shall be communicated to all current employees  
20 within one week of its adoption and shall be communicated to all new  
21 employees upon hiring. Each employer shall provide a written copy of the  
22 smoking policy upon request to any current or prospective employee.

23 (c) Notwithstanding any other provision of this section, K.S.A. 21-  
24 6111 or 21-6112, and amendments thereto, the proprietor or other person  
25 in charge of an adult care home, as defined in K.S.A. 39-923, and  
26 amendments thereto, or a medical care facility, may designate a portion of  
27 such adult care home, or the licensed long-term care unit of such medical  
28 care facility, as a smoking area, and smoking may be permitted within such  
29 designated smoking area.

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

31 (1) The outdoor areas of any building or facility beyond the access  
32 points of such building or facility;

33 (2) private homes or residences, except when such home or residence  
34 is used as a day care home, as defined in K.S.A. 65-530, and amendments  
35 thereto;

36 ~~(3) a hotel or motel room rented to one or more guests if the total~~  
37 ~~percentage of such hotel or motel rooms in such hotel or motel does not~~  
38 ~~exceed 20%;~~

39 ~~(4) the gaming floor of a lottery gaming facility or racetrack gaming~~  
40 ~~facility, as those terms are defined in K.S.A. 74-8702, and amendments~~  
41 ~~thereto;~~

42 ~~(5) that portion of an adult care home, as defined in K.S.A. 39-923,~~  
43 ~~and amendments thereto, that is expressly designated as a smoking area by~~

1 ~~the proprietor or other person in charge of such adult care home pursuant~~  
2 ~~to subsection (c) and that is fully enclosed and ventilated;~~

3 ~~(6) that portion of a licensed long-term care unit of a medical care~~  
4 ~~facility that is expressly designated as a smoking area by the proprietor or~~  
5 ~~other person in charge of such medical care facility pursuant to subsection~~  
6 ~~(c) and that is fully enclosed and ventilated and to which access is~~  
7 ~~restricted to the residents and their guests;~~

8 ~~(7)(4) tobacco shops; and~~

9 ~~(8)(5) a class A or class B club defined in K.S.A. 41-2601, and~~  
10 ~~amendments thereto, which: (A) Held a license pursuant to K.S.A. 41-~~  
11 ~~2606 et seq., and amendments thereto, as of January 1, 2009; and (B)~~  
12 ~~notifies the secretary of health and environment in writing, not later than~~  
13 ~~90 days after the effective date of this act *September 29, 2010*, that it~~  
14 ~~wishes to continue to allow smoking on its premises;~~

15 ~~(9) a private club in designated areas where minors are prohibited;~~

16 ~~(10) any benefit cigar dinner or other cigar dinner of a substantially~~  
17 ~~similar nature that: (A) Is conducted specifically and exclusively for~~  
18 ~~charitable purposes by a nonprofit organization which is exempt from~~  
19 ~~federal income taxation pursuant to section 501(c)(3) of the federal~~  
20 ~~internal revenue code of 1986; (B) is conducted no more than once per~~  
21 ~~calendar year by such organization; and (C) has been held during each of~~  
22 ~~the previous three years prior to January 1, 2011; and~~

23 ~~(11) that portion of a medical or clinical research facility constituting~~  
24 ~~a separately ventilated, secure smoking room dedicated and used solely~~  
25 ~~and exclusively for clinical research activities conducted in accordance~~  
26 ~~with regulatory authority of the United States or the state of Kansas, as~~  
27 ~~determined by the director of alcoholic beverage control of the department~~  
28 ~~of revenue.~~

29 Sec. 3. K.S.A. 21-6109 and 21-6110 are hereby repealed.

30 Sec. 4. This act shall take effect and be in force from and after its  
31 publication in the statute book.