

## SENATE BILL No. 116

By Senator Emler  
(By request)

1-31

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AN ACT prohibiting smoking in restaurants; amending K.S.A. 21-4009 and repealing the existing section.

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

New Section 1. (a) It shall be the public policy of the state of Kansas to promote the health and welfare of its citizens and the traveling public by increasing substantially the opportunity to enjoy public dining without the health hazard posed by second-hand smoke.

(b) As used in this section:

(1) "Accessory bar" means a place within a restaurant for the incidental service of alcoholic beverages and associated snacks, appetizers, and other products for consumption on the premises. Full restaurant food service shall not be available in an accessory bar.

(2) "Bingo hall" means any room, hall, building, enclosure or outdoor area used for the management, operation or conduct of a game of bingo by any nonprofit organization holding a license to manage, operate or conduct games of bingo pursuant to law and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

(3) "Bowling center or alley" means a place of business open to the public which offers the use of not less than twelve full scale bowling lanes that are each equipped with operable automatic pin setting apparatus and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

(4) "Class A club" means a premises so licensed by the state of Kansas which is owned or leased by a corporation, partnership, business trust or association and which is operated as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (referred to as members) and their families and guests accompanying them.

(5) "Class B club" means a premises so licensed by the state of Kansas operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic

1 beverages and for entertainment.

2 (6) “Drinking establishment” means premises so licensed by the state  
3 of Kansas which may be open to the general public, where alcoholic liquor  
4 by the individual drink is sold.

5 (7) “Hotel-motel, non-retail dining area” means that area in a hotel  
6 or motel designated for serving and consumption of non-retail “comple-  
7 mentary” food or beverages served by the hotel or motel to those persons  
8 renting a hotel or motel room.

9 (8) “Licensed club” means a class A or class B club with a valid license  
10 issued by the state of Kansas.

11 (9) “Other person in charge” means the agent of the proprietor au-  
12 thorized to perform administrative direction to, and general supervision  
13 of, the activities within a restaurant at any given time.

14 (10) “Physically separated” means separated from the smoke-free  
15 restaurant area by continuous floor-to-ceiling walls which are interrupted  
16 only by doors which are continuously closed other than when a person is  
17 actively entering or exiting the smoke-free area.

18 (11) “Private dining or banquet room” means an entire restaurant,  
19 room or hall used for a private social function and for which seating  
20 arrangements are in control of the sponsor of the function and not the  
21 proprietor or person in charge of the room or hall.

22 (12) “Proprietor” means the party, regardless of whether or not the  
23 party is owner or lessee of the restaurant, who ultimately controls, governs  
24 or directs the activities within the restaurant. The term does not mean  
25 the owner of the property, unless the owner ultimately controls, governs  
26 or directs the activities within the restaurant. The term proprietor may  
27 apply to a corporation, partnership or limited liability company as well as  
28 to an individual.

29 (13) “Recreational facility” means a place of business open to the  
30 public for the primary purpose of offering for use game tables or other  
31 mechanical forms of entertainment or competition and in which food  
32 service for consumption on the premises is incidental to the primary ac-  
33 tivity of the establishment.

34 (14) “Restaurant” means a building, structure or enclosure, or any  
35 part of a building, structure or enclosure, with table, booth or counter  
36 seating for 11 or more persons and used as, maintained as, advertised as  
37 or held out to be an operation which prepares, serves or otherwise pro-  
38 vides for sale of food and beverages for consumption on the premises.

39 (15) “Separate designated smoking area” means an indoor area where  
40 smoking is allowed, physically separated from the required smoke-free  
41 restaurant areas, and which includes physical separation and appropriate  
42 ventilation so that smoke from those areas does not drift, permeate or re-  
43 circulate into any smoke-free restaurant areas.

1 (16) "Smoking" means the: (A) Carrying or placing of a lighted cig-  
2 arette, lighted cigar or lighted pipe or any other lighted smoking equip-  
3 ment in one's mouth for the purpose of inhaling and exhaling smoke; (B)  
4 placing of a lighted cigarette, lighted cigar or lighted pipe or any other  
5 lighted smoking equipment in an ashtray or other receptacle and allowing  
6 smoke to diffuse in the air; or (C) carrying or placing of a lighted cigarette,  
7 lighted cigar or lighted pipe or any other lighted smoking equipment in  
8 one's hands or any appendage or devices and allowing smoke to diffuse  
9 in the air.

10 (c) Smoking shall not be permitted in a restaurant, except as follows:

11 (1) Outdoor or sidewalk seating. Smoking may be permitted in the  
12 outdoor or sidewalk seating portions of a restaurant if the outdoor or  
13 sidewalk seating area and the indoor smoke-free restaurant area are phys-  
14 ically separated.

15 (2) Time of day exception. The provisions of this section shall not  
16 apply to a restaurant during that time between 9:00 p.m. and 5:00 a.m.  
17 During that time, a proprietor of a restaurant may designate a smoking  
18 area in accordance with K.S.A. 21-4009 et seq. and amendments thereto.

19 (d) When a restaurant is located within a facility larger than the area  
20 used for the restaurant, no person shall smoke in the entire facility unless  
21 the proprietor or other person in charge of the facility has designated a  
22 smoking area which qualifies as a separate designated smoking area as  
23 defined by this section. Restaurants located within a larger facility include,  
24 without limitation, restaurants in truck stops, hotels, retail establishments  
25 and convention or meeting facilities.

26 (e) A city building official may make reasonable requirements and  
27 determinations consistent with the local building code and this section  
28 with regard to physical separation and appropriate ventilation in any case  
29 where those requirements need to be applied within such city to smoke-  
30 free restaurant areas adjacent or connected to areas in which smoking is  
31 permitted.

32 (f) The prohibition against smoking in restaurants set forth in this  
33 section shall not apply to a:

- 34 (1) Licensed club;
- 35 (2) bowling center or alley;
- 36 (3) bingo hall;
- 37 (4) recreational facility;
- 38 (5) hotel or motel, non-retail dining area;
- 39 (6) private dining or banquet room; or which, if located within a fa-  
40 cility in which a restaurant is also located, must meet the separation and  
41 ventilation requirements of a separate designated smoking area.

42 (g) (1) Licensed drinking establishments which derive from sales of  
43 food for consumption on the licensed drinking establishment premises

1 not in excess of 30% of its gross receipts from all sales of food and bev-  
2 erages on such premises in a 12-month period shall be eligible for a waiver  
3 from the requirements of this section. In order to obtain such a waiver,  
4 application shall be made to the division of alcohol and beverage control  
5 of the Kansas department of revenue by the holder of the drinking es-  
6 tablishment license verifying by sworn affidavit that the drinking estab-  
7 lishment falls below the maximum food sales ratio.

8 (2) Drinking establishment licensees seeking to open a drinking es-  
9 tablishment or substantially change operation of an existing establishment  
10 so that it may operate under the waiver for qualifying licensed drinking  
11 establishments shall provide to the division of alcohol and beverage con-  
12 trol of the Kansas department of revenue a sworn affidavit and agreement  
13 which shall state that the licensee's business plan projections indicate sales  
14 of food for consumption on the licensed drinking establishment premises  
15 shall not exceed 30% of its gross receipts from all sales of food and bev-  
16 erages on such premises.

17 (h) The proprietor or other person in charge of a place governed by  
18 this section shall: (1) Meet all signage requirements; (2) advise any person  
19 smoking in an area where smoking is prohibited that he or she is smoking  
20 in violation of state law; (3) advise any person who smokes in an area  
21 where smoking is prohibited by this section to refrain from smoking and,  
22 if the person does not refrain from smoking after being asked to do so,  
23 shall ask the person to leave. If the offending person refuses to leave, the  
24 proprietor shall handle the situation consistent with lawful methods for  
25 handling persons acting in a disorderly manner or as a trespasser; (4)  
26 remove all ashtrays and other smoking paraphernalia from areas where  
27 smoking is prohibited; and (5) in the case of a restaurant located within  
28 a facility larger than the area used for the restaurant, comply with all  
29 physical separation and ventilation standards to prevent the drifting, per-  
30 meation or re-circulation of smoke from any separate designated smoking  
31 area into the adjacent or connected areas of the restaurant.

32 (i) Violation of the prohibition against smoking in a restaurant set  
33 forth in this section shall be punishable by a fine in the amount established  
34 by K.S.A. 21-4012 and amendments thereto as the fine for a cigarette or  
35 tobacco infraction. Violation of the responsibilities of proprietors and  
36 other persons in charge of a place governed by this section shall constitute  
37 a misdemeanor punishable by a fine of not more than \$50. In addition,  
38 the department of health and environment, or local department of health,  
39 may institute an action in any court of competent jurisdiction to enjoin  
40 repeated violations of this act.

41 Sec. 2. K.S.A. 21-4009 is hereby amended to read as follows: 21-  
42 4009. As used in this act: (a) "Public place" means enclosed indoor areas  
43 open to the public or used by the general public including but not limited

1 to: ~~Restaurants~~, Retail stores, public means of mass transportation, pas-  
2 senger elevators, health care institutions or any other place where health  
3 care services are provided to the public, educational facilities, libraries,  
4 courtrooms, state, county or municipal buildings, restrooms, grocery  
5 stores, school buses, museums, theaters, auditoriums, arenas and recre-  
6 ational facilities.

7 (b) "Public meeting" includes all meetings open to the public.

8 (c) "Smoking" means possession of a lighted cigarette, cigar, pipe or  
9 any other lighted smoking equipment.

10 Sec. 3. K.S.A. 21-4009 is hereby repealed.

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

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