

HOUSE BILL No. 2162

By Committee on Health and Human Services

1-23

9 AN ACT concerning the use of cigarettes and tobacco products in school
10 buildings and on school property; creating the crime of using cigarettes
11 or tobacco products in school buildings and on school property; duties
12 of school board; amending K.S.A. 12-4113, 12-4214, 12-4305 and 72-
13 53,107 and K.S.A. 2006 Supp. 21-3105 and 21-4503a and repealing
14 the existing sections.
15

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

17 New Section 1. (a) It is unlawful for an individual 18 years of age
18 and older to use cigarettes or tobacco products in any school building or
19 on any property owned or leased by a unified school district.

20 (b) As used in this section:

21 (1) "School building" means any enclosed building used for pupil
22 attendance purposes by the board of education of a unified school district,
23 but does not include, a building, or part thereof, that is used for residential
24 purposes.

25 (2) "Cigarette" means any roll for smoking, made wholly or in part
26 of tobacco, irrespective of size or shape, and irrespective of tobacco being
27 flavored, adulterated or mixed with any other ingredient if the wrapper
28 is in greater part made of any material except tobacco.

29 (3) "Property owned or leased by a unified school district" means,
30 but is not limited to, school: Playgrounds, steps, parking lots, administra-
31 tion buildings, athletic facilities, gymnasiums, locker rooms and buses.

32 (4) "Tobacco products" means cigars, cheroots, stogies, periques;
33 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
34 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
35 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
36 of tobacco, and other kinds and forms of tobacco, prepared in such man-
37 ner as to be suitable for chewing or smoking in a pipe or otherwise, or
38 both for chewing and smoking. Tobacco products does not include
39 cigarettes.

40 (c) Subsection (a) does not apply to the use of a cigarette or tobacco
41 product in a classroom or on property owned or leased by a unified school
42 district as part of a display, lecture, demonstration or educational forum
43 sanctioned by a school administrator or faculty member concerning the

- 1 risks associated with the use of a cigarette or tobacco product.
- 2 (d) A violation of this section is a cigarette or tobacco infraction for
3 which the fine is \$25 to \$100.
- 4 (e) This section shall be part of and supplemental to the Kansas crim-
5 inal code.
- 6 Sec. 2. K.S.A. 12-4113 is hereby amended to read as follows: 12-
7 4113. As used in this act:
- 8 (a) "Appearance bond" means an undertaking, with or without se-
9 curity, entered into by a person in custody by which the person is bound
10 to comply with the conditions of the undertaking.
- 11 (b) "Accused person" means a person, corporation or other legal en-
12 tity accused by a complaint of the violation of a city ordinance.
- 13 (c) "Arraignment" means the formal act of calling the person accused
14 of violating an ordinance before the municipal court to inform the person
15 of the offense with which the person is charged, to ask the person whether
16 the person is guilty or not guilty and, if guilty, to impose sentence.
- 17 (d) "Arrest" means the taking of a person into custody in order that
18 the person will appear to answer for the violation of an ordinance. The
19 giving of a notice to appear is not an arrest.
- 20 (e) "Bail" is the security given for the purpose of insuring compliance
21 with the terms of an appearance bond.
- 22 (f) "City attorney" means any attorney who represents the city in the
23 prosecution of an accused person for the violation of a city ordinance.
- 24 (g) "Complaint" means a sworn written statement, or a written state-
25 ment by a law enforcement officer, of the essential facts constituting a
26 violation of an ordinance.
- 27 (h) "Custody" means the restraint of a person pursuant to an arrest.
- 28 (i) "Detention" means the temporary restraint of a person by a law
29 enforcement officer.
- 30 (j) "Law enforcement officer" means any person who by virtue of
31 office or public employment is vested by law with a duty to maintain
32 public order and to make arrests for violation of the laws of the state of
33 Kansas or ordinances of any municipality thereof.
- 34 (k) "Notice to appear" is a written notice to a person accused by a
35 complaint of having violated an ordinance of a city to appear at a stated
36 time and place to answer to the charge of the complaint.
- 37 (l) "Subpoena" is a process issued by the court to cause a witness to
38 appear and give testimony at a time and place therein specified.
- 39 (m) "Ordinance traffic infraction" is a violation of an ordinance that
40 proscribes or requires the same behavior as that proscribed or required
41 by a statutory provision that is classified as a traffic infraction in K.S.A.
42 8-2118 and amendments thereto.
- 43 (n) "Warrant" is a written order made by a municipal judge directed

1 to any law enforcement officer commanding the officer to arrest the per-
2 son named or described in it.

3 (o) “Ordinance cigarette or tobacco infraction” is a violation of an
4 ordinance that proscribes the same behavior as proscribed by subsection
5 (m) or (n) of K.S.A. 79-3321 *or by section 1*, and amendments thereto.

6 Sec. 3. K.S.A. 12-4214 is hereby amended to read as follows: 12-
7 4214. (a) Except as provided further, when a person is charged with an
8 ordinance traffic infraction or an ordinance cigarette or tobacco infrac-
9 tion, the notice to appear shall provide a place where the person may
10 make a written entry of appearance, waive the right to a trial and plead
11 guilty or no contest. The notice to appear shall provide a space in which
12 the law enforcement officer, except as provided in subsection (b), shall
13 enter the appropriate fine specified in the fine schedule established by
14 the municipal judge in accordance with K.S.A. 12-4305 and amendments
15 thereto, in the case of a traffic infraction, or a fine of \$25, in the case of
16 an ordinance cigarette or tobacco infraction *that prescribes the same be-*
17 *havior as prescribed by subsection (m) or (n) of K.S.A. 79-3321, and*
18 *amendments thereto*. Either the notice to appear or a separate form pro-
19 vided to the person by the law enforcement officer shall provide an ex-
20 planation: (1) Of the person’s right to appear and right to trial and the
21 person’s right to pay the appropriate fine prior to the appearance date;
22 (2) that failure to either pay such fine or appear at the specified time may
23 result in issuance of a warrant for the person’s arrest; and (3) in the case
24 of a traffic infraction, that failure to either pay such fine or appear at the
25 specified time may result in the suspension of the person’s driver’s license.
26 The law enforcement officer shall provide the person with the telephone
27 number and address of the municipal court to which the written entry of
28 appearance, waiver of trial, plea of guilty or no contest and payment of
29 fine shall be mailed.

30 (b) In lieu of the law enforcement officer entering the appropriate
31 fine for an ordinance traffic infraction, the officer may direct the person
32 charged with an ordinance traffic infraction to contact the clerk of the
33 municipal court to determine the applicable fine or provide the person
34 with a copy of the fine schedule established by the municipal judge in
35 accordance with K.S.A. 12-4305 and amendments thereto.

36 (c) When a ~~person~~ *juvenile* is charged with an ordinance cigarette or
37 tobacco infraction, the judge may require the juvenile to appear in court
38 with a parent or legal guardian.

39 (d) This section shall be a part of and supplemental to the provisions
40 of article 42 of chapter 12 of the Kansas Statutes Annotated and acts
41 amendatory thereof or supplemental thereto.

42 Sec. 4. K.S.A. 12-4305 is hereby amended to read as follows: 12-
43 4305. (a) The municipal judge shall establish a schedule of fines which

1 shall be imposed for municipal ordinance violations that are classified as
2 ordinance traffic infractions *and as ordinance cigarette or tobacco infrac-*
3 *tion pursuant to section 1, and amendments.* Also, the municipal judge
4 may establish a schedule of fines which shall be imposed for the violation
5 of certain other ordinances. Any fine so established shall be within the
6 minimum and maximum allowable fines established by ordinance for such
7 offenses by the governing body. The following traffic violations are spe-
8 cifically excluded from any schedule of fines:

- 9 (1) Reckless driving;
- 10 (2) driving while under the influence of alcohol or drugs, or both, or
11 driving with a blood or breath alcohol concentration of .08 or more;
- 12 (3) driving without a valid license issued or on a canceled, suspended
13 or revoked license;
- 14 (4) fleeing or attempting to elude a police officer; or
- 15 (5) offense comparable to those prescribed by K.S.A. 8-1602, 8-1603
16 and 8-1604 and amendments thereto.

17 (b) A person charged with the violation of an ordinance contained in
18 a schedule of fines established under subsection (a) shall, except as pro-
19 vided in subsection (c), appear at the place and time specified in the
20 notice to appear. If the person enters an appearance, waives right to trial,
21 pleads guilty or no contest, the fine shall be no greater than that specified
22 in the schedule.

23 (c) Except as provided in subsection (c) of K.S.A. 12-4214, and
24 amendments thereto, prior to the time specified in the notice to appear,
25 a person charged with an ordinance cigarette or tobacco infraction or a
26 violation of an ordinance contained in a schedule of fines established
27 under subsection (a) may enter an appearance, waive right to trial, plead
28 guilty or no contest and pay the fine for the violation as specified in the
29 schedule or in subsection (a) of K.S.A. 12-4214 and amendments thereto.
30 At the election of the person charged, such appearance, waiver, plea and
31 payment may be made by mail or in person and payment may be by
32 personal check. The complaint shall not have been complied with if a
33 check is not honored for any reason, or the fine is not paid in full prior
34 to the time specified in the notice to appear. When a person charged with
35 an ordinance cigarette or tobacco infraction or an ordinance traffic in-
36 fraction or other ordinance violation on a schedule of fines makes pay-
37 ment without executing a written waiver of right to trial and plea of guilty
38 or no contest, the payment shall be deemed such an appearance, waiver
39 of right to trial and plea of no contest.

40 The municipal judge may authorize the clerk of the municipal court or
41 some other person to accept by mail or in person such voluntary appear-
42 ance, plea of guilty or no contest and payment of the fine imposed by the
43 schedule or by subsection (a) of K.S.A. 12-4214 and amendments thereto.

1 The schedule of fines and persons authorized to accept such pleas shall
2 be conspicuously displayed in the office where such voluntary appearance,
3 plea of guilty and payment of fine occurs.

4 Sec. 5. K.S.A. 2006 Supp. 21-3105 is hereby amended to read as
5 follows: 21-3105. A crime is an act or omission defined by law and for
6 which, upon conviction, a sentence of death, imprisonment or fine, or
7 both imprisonment and fine, is authorized or, in the case of a traffic
8 infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes
9 are classified as felonies, misdemeanors, traffic infractions and cigarette
10 or tobacco infractions.

11 (1) A felony is a crime punishable by death or by imprisonment in
12 any state correctional institution or a crime which is defined as a felony
13 by law.

14 (2) A traffic infraction is a violation of any of the statutory provisions
15 listed in subsection (c) of K.S.A. 8-2118 and amendments thereto.

16 (3) A cigarette or tobacco infraction is a violation of subsection (m)
17 or (n) of K.S.A. 79-3321 *or section I*, and amendments thereto.

18 (4) All other crimes are misdemeanors.

19 Sec. 6. K.S.A. 2006 Supp. 21-4503a is hereby amended to read as
20 follows: 21-4503a. (a) A person who has been convicted of a felony may,
21 in addition to the sentence authorized by law, be ordered to pay a fine
22 which shall be fixed by the court as follows:

23 (1) For any off-grid felony crime or any felony ranked in severity level
24 1 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto,
25 a sum not exceeding \$500,000.

26 (2) For any felony ranked in severity levels 1 through 5 of the nondrug
27 grid as provided in K.S.A. 21-4704 and amendments thereto or in severity
28 levels 2 or 3 of the drug grid as provided in K.S.A. 21-4705 and amend-
29 ments thereto, a sum not exceeding \$300,000.

30 (3) For any felony ranked in severity levels 6 through 10 of the non-
31 drug grid as provided in K.S.A. 21-4704 and amendments thereto or in
32 severity level 4 of the drug grid as provided in K.S.A. 21-4705 and amend-
33 ments thereto, a sum not exceeding \$100,000.

34 (b) A person who has been convicted of a misdemeanor, in addition
35 to or instead of the imprisonment authorized by law, may be sentenced
36 to pay a fine which shall be fixed by the court as follows:

37 (1) For a class A misdemeanor, a sum not exceeding \$2,500.

38 (2) For a class B misdemeanor, a sum not exceeding \$1,000.

39 (3) For a class C misdemeanor, a sum not exceeding \$500.

40 (4) For an unclassified misdemeanor, any sum authorized by the stat-
41 ute that defines the crime. If no penalty is provided in such law, the fine
42 shall not exceed the fine provided herein for a class C misdemeanor.

43 (c) As an alternative to any of the above fines, the fine imposed may

1 be fixed at any greater sum not exceeding double the pecuniary gain
2 derived from the crime by the offender.

3 (d) A person who has been convicted of a traffic infraction may be
4 sentenced to pay a fine which shall be fixed by the court, not exceeding
5 \$500.

6 (e) A person who has been convicted of a cigarette or tobacco in-
7 fraction *pursuant to K.S.A. 79-3321, and amendments thereto*, shall be
8 sentenced to pay a fine of \$25 *and pursuant to section 1, and amendments*
9 *thereto, shall be sentenced to pay a fine of \$25 to \$100, as determined by*
10 *the court.*

11 (f) The provisions of this section shall apply to crimes committed on
12 or after July 1, 1993.

13 Sec. 7. K.S.A. 72-53,107 is hereby amended to read as follows: 72-
14 53,107. (a) The use of *cigarettes or tobacco products* in any school build-
15 ing *or on any property owned or leased by a unified school district* is
16 hereby prohibited. No board of education of any school district shall allow
17 any person to use *cigarettes or tobacco products* in any school building
18 *or on any property owned or leased by a unified school district.*

19 (b) As used in this section, ~~the term:~~

20 (1) "School building" means any enclosed building used for pupil
21 attendance purposes by the board of education of a unified school district.
22 The term school building ~~does not include a~~ *also includes any school*
23 *building, or part thereof, that is used for residential purposes or leased*
24 ~~from the school district for nonschool-sponsored activities.~~

25 (2) "*Property owned or leased by a unified school district*" means, but
26 *is not limited to, school: playgrounds, steps, parking lots, administration*
27 *buildings, athletic facilities, gymnasiums, locker rooms and buses.*

28 (3) "*Cigarette*" and "*tobacco products*" have the meanings ascribed
29 *thereto in section 1, and amendments thereto.*

30 (c) *Subsection (a) does not apply to the use of a cigarette or tobacco*
31 *product in a classroom or on property owned or leased by a unified school*
32 *district as part of a lecture, demonstration or educational forum sanc-*
33 *tioned by a school administrator or a faculty member concerning the risks*
34 *associated with the use of a cigarette or tobacco product.*

35 (d) *The board of education of every school district shall authorize the*
36 *principal of an elementary or secondary school or the principal's designee*
37 *to enforce this section to assure the health and safety of students.*

38 (e) *The board of education of every school district shall implement a*
39 *program to inform pupils and patrons of the district of the prohibitions*
40 *on the use of cigarettes and tobacco products pursuant to this section and*
41 *section 1, and amendments thereto.*

42 Sec. 8. K.S.A. 12-4113, 12-4214, 12-4305 and 72-53,107 and K.S.A.
43 2006 Supp. 21-3105 and 21-4503a are hereby repealed.

1 Sec. 9. This act shall take effect and be in force from and after its
2 publication in the statute book.