

## HOUSE BILL No. 2039

By Committee on Health and Human Services

1-19

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1 AN ACT concerning crimes and punishments; relating to smoking;  
2 amending K.S.A. 2010 Supp. 21-4009 and 21-4010 and repealing the  
3 existing sections.

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

6 Section 1. K.S.A. 2010 Supp. 21-4009 is hereby amended to read as  
7 follows: 21-4009. As used in K.S.A. 21-4009 through 21-4014, and  
8 amendments thereto:

9 (a) "Access point" means the area within a ten-foot radius outside of  
10 any doorway, open window or air intake leading into a building or facility  
11 that is not exempted pursuant to subsection (d) of K.S.A. 21-4010, and  
12 amendments thereto.

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

18 (c) "Employee" means any person who is employed by an employer  
19 in consideration for direct or indirect monetary wages or profit, and any  
20 person who volunteers their services for a nonprofit entity.

21 (d) "Employer" means any person, partnership, corporation,  
22 association or organization, including municipal or nonprofit entities,  
23 which employs one or more individual persons.

24 (e) "Enclosed area" means all space between a floor and ceiling  
25 which is enclosed on all sides by solid walls, windows or doorways  
26 which extend from the floor to the ceiling, including all space therein  
27 screened by partitions which do not extend to the ceiling or are not solid  
28 or similar structures. For purposes of this section, the following shall not  
29 be considered an "enclosed area": (1) Rooms or areas, enclosed by walls,  
30 windows or doorways, having neither a ceiling nor a roof and which are  
31 completely open to the elements and weather at all times; and (2) rooms  
32 or areas, enclosed by walls, fences, windows or doorways and a roof or  
33 ceiling, having openings that are permanently open to the elements and  
34 weather and which comprise an area that is at least 30% of the total  
35 perimeter wall area of such room or area.

36 (f) "Food service establishment" means any place in which food is

1 served or is prepared for sale or service on the premises. Such term shall  
2 include, but not be limited to, fixed or mobile restaurants, coffee shops,  
3 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich  
4 shops, soda fountains, taverns, private clubs, roadside kitchens,  
5 commissaries and any other private, public or nonprofit organization or  
6 institution routinely serving food and any other eating or drinking  
7 establishment or operation where food is served or provided for the  
8 public with or without charge.

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

18 ~~(h) (g) "Medical care facility" means a physician's office, general~~  
19 ~~hospital, special hospital, ambulatory surgery center or recuperation~~  
20 ~~center, as defined by K.S.A. 65-425, and amendments thereto, and any~~  
21 ~~psychiatric hospital licensed under K.S.A. 75-3307b, and amendments~~  
22 ~~thereto.~~

23 ~~(i) (h) "Outdoor recreational facility" means a hunting, fishing,~~  
24 ~~shooting or golf club, business or enterprise operated primarily for the~~  
25 ~~benefit of its owners, members and their guests and not normally open to~~  
26 ~~the general public.~~

27 ~~(j) (i) "Place of employment" means any enclosed area under the~~  
28 ~~control of a public or private employer, including, but not limited to,~~  
29 ~~work areas, auditoriums, elevators, private offices, employee lounges and~~  
30 ~~restrooms, conference and meeting rooms, classrooms, employee~~  
31 ~~cafeterias, stairwells and hallways, that is used by employees during the~~  
32 ~~course of employment. For purposes of this section, a private residence~~  
33 ~~shall not be considered a "place of employment" unless such residence is~~  
34 ~~used as a day care home, as defined in K.S.A. 65-530, and amendments~~  
35 ~~thereto.~~

36 ~~(k) (j) "Private club" means an outdoor recreational facility operated~~  
37 ~~primarily for the use of its owners, members and their guests that in its~~  
38 ~~ordinary course of business is not open to the general public for which~~  
39 ~~use of its facilities has substantial dues or membership fee requirements~~  
40 ~~for its members.~~

41 ~~(l) (k) "Public building" means any building owned or operated by:~~  
42 ~~(1) The state, including any branch, department, agency, bureau,~~  
43 ~~commission, authority or other instrumentality thereof; (2) any county,~~

1 city, township, other political subdivision, including any commission,  
2 authority, agency or instrumentality thereof; or (3) any other separate  
3 corporate instrumentality or unit of the state or any municipality.

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

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

18 ~~(o)~~ (n) "Smoking" means possession of a lighted cigarette, cigar,  
19 pipe or burning tobacco in any other form or device designed for the use  
20 of tobacco.

21 ~~(p)~~ (o) "Tobacco shop" means any indoor area operated primarily for  
22 the retail sale of tobacco, tobacco products or smoking devices or  
23 accessories, and which derives not less than 65% of its gross receipts  
24 from the sale of tobacco.

25 ~~(q)~~ (p) "Substantial dues or membership fee requirements" means  
26 initiation costs, dues or fees proportional to the cost of membership in  
27 similarly-situated outdoor recreational facilities that are not considered  
28 nominal and implemented to otherwise avoid or evade restrictions of a  
29 statewide ban on smoking.

30 Sec. 2. K.S.A. 2010 Supp. 21-4010 is hereby amended to read as  
31 follows: 21-4010. (a) No person shall smoke in an enclosed area or at a  
32 public meeting including, but not limited to:

33 (1) Public places;

34 (2) taxicabs and limousines;

35 (3) restrooms, lobbies, hallways and other common areas in public  
36 and private buildings, condominiums and other multiple-residential  
37 facilities;

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

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

43 (6) any place of employment.

1 (b) Each employer having a place of employment that is an enclosed  
2 area shall provide a smoke-free workplace for all employees. Such  
3 employer shall also adopt and maintain a written smoking policy which  
4 shall prohibit smoking without exception in all areas of the place of  
5 employment. Such policy shall be communicated to all current employees  
6 within one week of its adoption and shall be communicated to all new  
7 employees upon hiring. Each employer shall provide a written copy of  
8 the smoking policy upon request to any current or prospective employee.

9 (c) Notwithstanding any other provision of this section, K.S.A. 21-  
10 4011 or 21-4012, and amendments thereto, the proprietor or other person  
11 in charge of an adult care home, as defined in K.S.A. 39-923, and  
12 amendments thereto, or a medical care facility, may designate a portion of  
13 such adult care home, or the licensed long-term care unit of such medical  
14 care facility, as a smoking area, and smoking may be permitted within  
15 such designated smoking area.

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

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

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

22 (3) a hotel or motel room rented to one or more guests if the total  
23 percentage of such hotel or motel rooms in such hotel or motel does not  
24 exceed 20%;

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

28 ~~(5) (4)~~ that portion of an adult care home, as defined in K.S.A. 39-  
29 923, and amendments thereto, that is expressly designated as a smoking  
30 area by the proprietor or other person in charge of such adult care home  
31 pursuant to subsection (c) and that is fully enclosed and ventilated;

32 ~~(6) (5)~~ that portion of a licensed long-term care unit of a medical  
33 care facility that is expressly designated as a smoking area by the  
34 proprietor or other person in charge of such medical care facility pursuant  
35 to subsection (c) and that is fully enclosed and ventilated and to which  
36 access is restricted to the residents and their guests;

37 ~~(7) (6)~~ tobacco shops;

38 ~~(8) (7)~~ a class A or class B club defined in K.S.A. 41-2601, and  
39 amendments thereto, which (A) held a license pursuant to K.S.A. 41-  
40 2606 et seq., and amendments thereto, as of January 1, 2009; and (B)  
41 notifies the secretary of health and environment in writing, not later than  
42 90 days after the effective date of this act, that it wishes to continue to  
43 allow smoking on its premises; and

1       ~~(9)~~ (8) a private club in designated areas where minors are  
2 prohibited.

3       Sec. 3. K.S.A. 2010 Supp. 21-4009 and 21-4010 are hereby  
4 repealed.

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