

Appendix _____ B _____ EXPLANATION OF Smoking Ban ~ HB2221

HB2111 amends the law concerning cigarette or tobacco infractions and the taxation and unlawful use of cigarette and tobacco products. Additionally, the bill creates the Kansas Indoor Clean Air Act for certain provisions in the bill.

The bill bans smoking and makes the act of smoking in the following places a cigarette or tobacco infraction:

Public places;

Taxicabs and limousines;

Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residence facilities;

Restrooms, lobbies, and other common areas in hotels and motels and in at least 80 percent of the guest sleeping quarters within a hotel or motel;

Access points of all buildings and facilities unless the building or facility is exempted by the bill; and

Any place of employment.

Exemptions. Buildings and facilities exempted from the smoking ban are those not defined as an enclosed area, including rooms or areas without a ceiling or a roof and completely open to the elements at all times, and rooms or areas with a ceiling or roof enclosed by walls, fences, windows, or doorways but which have an opening that is completely and permanently open to the elements and that comprises at least 30 percent of the total perimeter wall area of such room or area.

The following also are exempted from the provisions of the bill:

Outdoor areas of any building or facility beyond the access points of the building or facility;

Private homes or residences, except when used as a day care home;

Hotel or motel rooms designated for smoking guests if the percent of such rooms does not exceed 20 percent of the total hotel or motel rooms;

The gaming floor of a lottery gaming facility or racetrack gaming facility;

The portion of an adult care home that is designated as a smoking area and that is fully enclosed and ventilated;

The portion of a licensed long-term care unit of a medical care facility that is designated as a smoking area and that is fully enclosed and ventilated;

Tobacco shops;

Class A and Class B clubs holding a license as of January 1, 2009, and who notify the Secretary of Health and Environment in writing within 90 days after the effective date of the bill that they wish to continue to allow smoking on the premises; and

Private clubs which meet the following criteria:

Are an outdoor recreational facility that is a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and is not open to the public;

Have substantial dues or membership fee requirements for use of the facility which are proportional in cost to similarly situated outdoor recreational facilities that are not considered nominal and have not been implemented to avoid or evade restrictions of a statewide ban on smoking; and

Permit smoking only in designated areas where minors are not allowed.

The bill defines the access point for buildings and facilities as an area within a ten-foot radius outside of any doorway, open window or air intake leading into the building or facility that is not exempt from the smoking ban. A tobacco shop is defined as any indoor area operated primarily for the retail sale of tobacco, tobacco products, or smoking devices or accessories and which derives not less than 65 percent of its gross receipts from the sale of tobacco.

Requirements. The bill requires each employer having a place of employment that is an enclosed area to provide a smoke-free workplace; to adopt and maintain a written smoking policy that prohibits smoking without exception in the place of employment; to communicate the policy to all current employees within one week of its adoption and to new employees upon hiring; and to provide a copy of the policy to current or prospective employees upon request. Additionally, the proprietor or person in charge of a public place or other area where smoking is prohibited is required to post in a conspicuous place signs displaying the international “no smoking” symbol and clearly stating that smoking is prohibited by state law.

Unlawful acts and fines. It will be unlawful for any person who controls the use of any public place or other area where smoking is prohibited to fail to comply with all or any of the provisions set out in the bill or to allow smoking to occur where prohibited by law if they have knowledge that smoking is occurring and if they acquiesce to the smoking. It also is unlawful

for any person to smoke in an area where smoking is prohibited. Any person who violates the provisions of the bill will be guilty of a cigarette or tobacco infraction which is punishable by a fine.

The following fines are established by the bill:

Not to exceed \$100 for the first violation;

Not to exceed \$200 for the second violation within a one-year period of the first violation; and

Not to exceed \$500 for the third or subsequent violation within a one-year period after the first violation.

The number of violations within a year is measured by the date the smoking violations occurs. Further, each individual allowed to smoke by the person who controls the use of any public place or other area where smoking is prohibited is considered a separate violation for determining the number of violations that occurred.

Other provisions. Employers are not allowed to discharge, refuse to hire, or retaliate against an employee, applicant for employment, or customer if they report, or attempt to prosecute a violation of any of the provisions of the bill. In addition to the civil fines which now may be levied against any day care home found to be in violation, the bill also allows day care homes to be subject to the fines for a tobacco or cigarette infraction. The bill also gives the Director of Alcoholic Beverage Control the authority to promulgate rules and regulations to insure that any exemption from the statewide ban on smoking is *bona fide* and the entity seeking such exemption is not inappropriately seeking to circumvent the smoking ban created under the bill.

Additional Cigarette and Tobacco Products Provisions. The bill also amends the law concerning the taxation and unlawful sale of cigarette and tobacco products. The bill adds the definition of a “self-service display” and a “tobacco specialty store.” A “self-service display” is defined as a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer’s consumers, and from which such consumers can readily access the cigarettes or tobacco products without the assistance of a salesperson. A display case behind locked doors is not defined as a self-service display. A “tobacco specialty store” is defined as a dealer establishment that derives at least 75 percent of its revenue from cigarettes or tobacco products. The bill makes it unlawful for an establishment to sell cigarettes or tobacco products by means of a self-service display, with the following two exceptions:

The vending machine is located behind a counter or in some area of the establishment to which minors are prohibited by law from having access; is used in a commercial building or industrial plant where the public is not customarily admitted and the vending machine is intended for the sole use of adult employees; or the vending machine has a lock-out device which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine; or The self-service display is located in a tobacco specialty store. The provisions of the bill concerning cigarette and tobacco products taxation and sales become effective upon publication in the statute book. The remainder of the bill’s provisions become effective January 2, 2010.