

# Kansas State Statutes

## Smoke-free Air

### Adult Care Homes and Long-Term Care Facilities

Designated smoking areas (fully enclosed and separately ventilated) of licensed adult care homes and long-term care facilities may allow smoking.  
Kansas Indoor Clean Air Act (2101 HB 2221)

### Bars

Smoking is prohibited in bars.  
Kansas Indoor Clean Air Act (2101 HB 2221)

### Casinos

Gaming floors of lottery gaming facilities or racetrack gaming facilities may allow smoking.  
Kansas Indoor Clean Air Act (2101 HB 2221)

### Child Care Facilities

Smoking is prohibited in day care homes, group day care homes and family day care homes while children are present. Outside areas on the premises of the facility are specifically excluded from this law. The Secretary of Health and Environment may levy a civil fine of up to \$500 against any day care home for a first or second violation, and suspend the license for third or subsequent violations. In addition to any civil fine which may be levied, any day care home that violates any provision of this section may also be subject to criminal punishment pursuant to KSA 21-4012. KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

### Class A and B Clubs

Class A & B Clubs licensed prior to January 1, 2009, may allow smoking if they notify the Secretary of the Kansas Department of Health and Environment that they will remain a smoking establishment by September 28, 2010. NOTE: Implementation of this exemption is currently delayed due to pending litigation. Smoking is permitted in all A & B clubs until further notice.

- o A Class A club is a nonprofit social, fraternal or war veteran's club operated for the exclusive use of club members and club member's families and guests. A Class B club is operated for profit by a corporation, partnership or individual. Both Class A and B clubs are licensed by the Director of the Kansas Alcoholic Beverage Control (ABC), a division of the Kansas Department of Revenue.

KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

### Government Buildings

Smoking is prohibited in all leased areas and buildings owned, operated or occupied by any executive branch agency under the jurisdiction of the governor. Agencies that operate residential or living areas occupied by patients, inmates or residents of state institutions may establish limited designated smoking areas where deemed necessary due to the needs of patients, inmates or residents or due to security or staffing considerations. Buildings serving as homes or apartments for employees shall not be subject to this policy unless specifically applied to that property by the head of the state agency. State Board of Regents institutions shall be subject to any policy adopted by the Board of Regents. EXECUTIVE ORDER NO 94-165 (1994). No person shall smoke in any area, room, hallway, or other place in the state capitol and no area shall be designated as a smoking area. KAN. STAT. ANN. § 21-4016 (1993).

### Health Care Facilities

Smoking is prohibited in "medical care facilities" which includes a physician's office general or special hospitals, ambulatory surgery centers or recuperation centers, and any licensed psychiatric hospital. A smoking area may be established within a licensed long-term care unit if such area is fully enclosed and well ventilated.  
KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

## Hotels and Motels

Up to 20% of hotel/motel sleeping rooms may be smoking rooms.  
KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

## Multi-unit Housing

Smoking is allowed in private homes or residences, except when such home or residence is used as a day care home. Smoking is prohibited in lobbies, hallways and other common areas in condominiums and other multiple-residential facilities.  
KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

## Outdoor Areas

Smoking is allowed in outside areas that are not enclosed and are at least 10 feet from any doorway, open window or air intake of an enclosed area. According to Section 2 (e) “the following shall not be considered an ‘enclosed area’: (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.”  
KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

## Private Recreational Clubs

Designated indoor areas of private outdoor recreational clubs (i.e. golf clubs, hunting clubs) where minors are prohibited may allow smoking.  
KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

## Private Workplaces

Smoking is prohibited in places of employment. KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

## Public Places

The Kansas Indoor Clean Air Act (2010 HB 2221) prohibits smoking in enclosed indoor areas open to, or used by, the general public including, but not limited to: banks, bars, food service establishments, retail service establishments, retail stores, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, museums, theaters, auditoriums, arenas and recreational facilities. KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221). Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act. KAN. STAT. ANN. §§ 21-4009 to 21-4013 (1987).

The proprietor or other person in charge of the premises of a public place shall post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law. KANSAS INDOOR CLEAN AIR ACT (2010 HB 2221).

## Restaurants

Smoking is prohibited in restaurants.  
Kansas Indoor Clean Air Act (2101 HB 2221)

## Schools

The use of tobacco products in any public school building is prohibited. A school building is defined as an enclosed building used for pupil attendance purposes by the board of education of a unified school district. Not included are buildings or portions thereof used for residential purposes or leased from the school district for nonschool sponsored activities. KAN STAT. ANN. §§ 72-53, 107 (1988).

Smoking is prohibited on school buses. KAN. STAT. ANN. § 21-4010 (1987).

## Tobacco Shops

Tobacco shops that derive not less than 65% of gross receipts from the sale of tobacco may allow smoking.  
Kansas Indoor Clean Air Act (2101 HB 2221).

## Vehicles

Smoking is prohibited in taxicabs and limousines.  
Kansas Indoor Clean Air Act (2101 HB 2221).

## Penalties/Enforcement

Fines for owners/operators for allowing smoking and/or not posting no smoking sign, and fines for individuals smoking in no smoking facilities:

- 1st violation = not more than \$100
- 2nd violation within 1 year = not more than \$200
- 3rd and additional violations within 1 year = not more than \$500 per violation
- Each individual smoking in an establishment where smoking is prohibited is a separate violation for the business.

Kansas Indoor Clean Air Act (2101 HB 2221)

## Tobacco Excise Taxes

### Cigarettes

Tax rate per pack of 20: 79 cents. Date last changed: January 1, 2003 — from 70 cents to 79 cents. Year first enacted: 1927 KAN. STAT. ANN. § 79-3310 (2003).

All proceeds from the cigarette tax go to the general fund. KAN. STAT. ANN. § 79-3387 (2001).

### Other Tobacco Products

All other tobacco products: 10% of the wholesale sales price KAN. STAT. ANN. § 79-3371 (1972).

All proceeds from the tax on other tobacco products go to the general fund. KAN. STAT. ANN. § 79-3387 (2001).

## Youth Access

### Age Restrictions on Sales of Tobacco Products

Minimum age for sales of tobacco products: 18

## Compliance/Enforcement

The Director of Taxation shall administer and enforce the provisions of the Kansas Cigarette and Tobacco Products Act. For the purpose of enforcing this act the director may call to the director's aid any law enforcement officer of this state to prosecute all violators of any of the provisions of this act. The police of any city shall have the right to inspect all premises, records and invoices pertaining to the wholesale distribution, retail sale or sampling of cigarettes or tobacco products within the city at all reasonable times. No person shall engage or direct a minor to violate any provision of this act for purposes of determining compliance with provisions of this act unless such person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and such person is an officer having authority to enforce this act; an authorized representative of the attorney general; a county attorney or a district attorney; or an authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with the provisions of this act. KAN. STAT. ANN. §§ 79-3326 & 79-3394 (1996).

It is unlawful to prevent the Director of Taxation or any officer or agent authorized by law, to make a full inspection for the purpose of this act, of any place of business and all premises connected thereto where cigarettes are or may be manufactured, sold, distributed, or given away. Violation is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both. KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

## Penalties for Sales to Minors

It is a Class B misdemeanor punishable by a minimum fine of \$200 for any person to: (1) Sell, give or furnish any cigarettes or tobacco products to any person less than 18 years of age; or (2) buy any cigarettes or tobacco products for any person less than 18 years of age. It is a defense to prosecution if the defendant is a licensed retail dealer or employee thereof; the defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and the person under 18 years of age exhibited a driver's license, or other official document containing a photograph, showing they were of legal age to purchase or receive cigarettes or tobacco products. The person who violates this law shall be the individual directly selling,

furnishing or distributing the cigarettes or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both. KAN. STAT. ANN. § 79-3322 (2000).

In addition to or in lieu of any other civil or criminal penalty provided by law, the Secretary of Revenue or their designee, upon a finding that a licensee has violated any provision of the Kansas Cigarette and Tobacco Products Act, including selling, giving or furnishing tobacco products to minors, shall impose on such licensee a civil fine not exceeding \$1,000 for each violation. In determining the fine to be imposed, the Secretary of Revenue or their designee shall consider it to be a mitigating circumstance if the employee had completed a training program in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age. KAN. STAT. ANN. § 79-3391 (2001).

Whenever the Director of Taxation has reason to believe that any person licensed under this act has violated any of the provisions of this act, the director shall notify the person by certified mail of the director's intention to suspend or revoke the person's license or licenses. Within 10 days after the mailing of the notice, the person may request a hearing in writing before the director. If, after such hearing, it appears to the satisfaction of the director that the person has violated any of the provisions of this act, the director is hereby authorized and empowered to suspend or revoke the person's license or licenses for a portion of the succeeding calendar year for such period as the director determines is necessary but in no case for a period ending more than one year following the date upon which the license or licenses were suspended or revoked. KAN. STAT. ANN. § 79-3309 (1996).

#### Sign Posting

It is unlawful for any person who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "BY LAW, CIGARETTES AND TOBACCO PRODUCTS MAY BE SOLD ONLY TO PERSONS 18 YEARS OF AGE AND OLDER." Violation is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both. KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

#### Penalties to Minors

It is unlawful for any person under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products. It is unlawful for any person who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products. Violation is a tobacco infraction punishable by a fine of \$25. KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

#### Internet Sales

The following restrictions are placed on Internet, telephone, and mail order sales of cigarettes: 1) each person engaged in the business of selling cigarettes to persons who reside in Kansas shall obtain a license, and shall have a valid Kansas cigarette tax stamp affixed to each package; 2) all retail cigarette dealers, whether located in or outside Kansas, shall have a registration certificate and be subject to the provisions of the Kansas retailers' sales tax act; 3) all cigarette sales transactions over the Internet, telephone, or by mail order shall not be completed unless before each delivery the seller has obtained a certification from the purchaser that includes a reliable confirmation that the purchaser is at least 18 years of age; that the cigarettes purchased are not intended for consumption by an individual who is younger than 18; and a written statement signed by the purchaser that certifies the purchaser's address and that the purchaser is at least 18 years of age; 4) the retail cigarette dealer shall verify the information contained in the certification provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the purchaser; 5) all invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes through the Internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette dealer license number, Kansas sales tax registration number, business name and address of the seller; 6) cigarette packages being shipped are also subject to certain labeling requirements. Violation of the requirement to obtain a license, certification requirement, or verification requirement is a severity level eight, non-person felony. Violations of all other requirements are misdemeanors punishable by a fine of not more than \$1,000 and/or imprisonment for one year. Other tobacco products are excluded from these requirements. KAN. STAT. ANN. § 79-3333 (2004).

## **Restrictions on Distribution of Tobacco Product Samples or Sales of Single Cigarettes Samples**

It is unlawful for any person to distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) in an area to which persons under 18 years of age are denied access; (2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or (3) at or adjacent to an outdoor production, repair or construction site or facility. Violation is a misdemeanor punishable by a fine of not more than \$1,000, up to one year in prison, or both. KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

### **Single Cigarettes**

It is unlawful to sell or distribute in this state any cigarettes the package of which does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States. Violation is a misdemeanor punishable by a fine of not more than \$1,000, up to one year in prison, or both. KAN. STAT. ANN. §§ 79-3321 & 79-3322 (2000).

## **Restrictions on the Sale of Tobacco Products in Self-Service Displays**

It is unlawful to sell cigarettes or tobacco products by means of a self-service display in any establishment, except a permitted vending machine or a self-service display in a tobacco specialty store. Self-service display means 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 cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.

Kansas Indoor Clean Air Act (2101 HB 2221).

## **Restrictions on the Sale of Tobacco Products in Vending Machines**

### **Placement**

It is unlawful for any person to sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except: (1) installation and use behind the counter; (2) installation and use in a commercial building or industrial plant; or (3) vending machines with lockout devices. KAN STAT. ANN. § 79-3321 (2000).

### **Penalty**

Violators are guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000, up to one year in prison, or both. KAN STAT. ANN. § 79-3322 (2000).

## **Licensing Requirements**

### **Requirements**

Cigarette retailers, wholesalers, and vending machine operators must be licensed to sell cigarettes. Licenses are renewed every two years. A vending machine operator is required to obtain a vending machine operator's master license and, in addition, a separate permit for each vending machine operated by the operator. Selling cigarettes without a license is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year, or both. KAN. STAT. ANN. §§ 79-3303 (2001), 79-3321(2000) & 79-3322 (2000).

Distributors must be licensed to sell or deal in tobacco products. A separate license is required for each place of business. Each license shall expire on December 31<sup>st</sup> following its date of issue unless sooner revoked.

Selling tobacco products without a distributor's license is a misdemeanor punishable by a fine of not more than \$1,000, imprisonment for not more than one year or both. KAN. STAT. ANN. §§ 79-3373 (1996); 79-3374 (1972); 79-3375 (1972); 79-3321 (2000) & 79-3322 (2000).

### **Fee**

Retail License: \$25 for each establishment every two years; Wholesale dealer's license: \$50 for each establishment every two years; Vending Machines: \$50 for a vending machine distributor license, no fee for a vending machine operator license and \$25 for each vending machine every two years; Distributor's License for Tobacco Products: \$25 per year. KAN. STAT. ANN. §§ 79-3304 (1996) & 79-3374 (1972).

License Suspension for Sales to Minors

The Director of Taxation, after a hearing, can suspend the license of any person licensed under the Kansas Cigarette and Tobacco Products Act for violations of this act for a period not to exceed one year. KAN. STAT. ANN. § 79-3309 (1996).

## **Smoker Protection Laws**

None

## **Advertising & Promotion**

None

## **Product Disclosure**

None

## **Tobacco Divestment**

None

## **Tobacco Liability**

Industry Protection

In civil litigation under any legal theory, involving a signatory or a successor to a signatory of the Master Settlement Agreement, the maximum appeal bond that any appellant in the litigation may be required to post to stay execution on a judgment during an appeal or discretionary review shall be set in accordance with existing law and court rules, except that in no case shall an appeal bond for any individual appellant and its successors, individually or collectively exceed \$25 million, regardless of the total value of the judgment. If it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent the dissipation or diversion of assets. KAN. STAT. ANN. § 50-6a05 (2005).

## **Tobacco Settlement**

Tobacco Control Appropriations

Appropriated and allocated \$2,150,000 for tobacco control and prevention programs from the state's annual MSA payments, and fee revenue from the Department of Social and Rehabilitation Services. S.B. 225 enacted 4/21/05 and effective 7/1/05; H.B. 2482 enacted 5/16/05 and effective 7/1/05; and additional money from Department of Social and Rehabilitation Services for failure to hit Synar targets.

Note: Kansas failed to meet the federal Synar amendment target of 80 percent of a random sample of stores selling tobacco products to minors, so it was required to spend \$2.3 million over two years for enforcement of youth access laws to bring the state back into compliance. States that do not meet the Synar amendment target are subject to loss of certain federal substance abuse funding.

## **Non-Monetary Provisions**

Established a tobacco use prevention and control fund from which expenditures can be made for a comprehensive, statewide tobacco use prevention and control program. The comprehensive statewide tobacco use prevention and control program shall support tobacco use prevention and control activities including community programs to prevent and reduce tobacco use through local involvement and partnerships; school-based programs to prevent and reduce tobacco use; tobacco cessation programs for youth and adults; special projects to reduce the disparities in smoking prevalence among various populations; restriction of youth access to tobacco products; surveillance of smoking rates; and any other activities determined by the secretary of the Department of Health and Environment to be necessary to implement the program. An independent evaluation of the program is required as well as a state tobacco control report that breaks down information relevant to tobacco control efforts by county. FY2005 Annual Budget (H.B. 2675) enacted 4/19/04 & effective 5/5/04.

Information taken from American Lung Association's State Legislated Actions on Tobacco Issues 2005. Last Updated: 1/1/2006