

**Senate Substitute for HOUSE BILL No. 2058**

By Committee on Federal and State Affairs

4-3

1 AN ACT concerning gaming; *{removing the exemption in the Kansas*  
2 *indoor clean air act for gaming floors;}* relating to sports wagering;  
3 authorizing any compact with a federally recognized Indian tribe to  
4 include provisions governing sports wagering outside the boundaries of  
5 Indian lands; crediting tax revenue generated by wagers on historical  
6 horse races to the horse breeding development fund and the horse fair  
7 racing benefit fund; amending K.S.A. 2022 Supp. *{21-6109, 21-6110, }*  
8 *46-2305 and 74-8823 and repealing the existing sections.*  
9

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

11 *{Section 1. K.S.A. 2022 Supp. 21-6109 is hereby amended to read as*  
12 *follows: 21-6109. As used in K.S.A. 2022 Supp. 21-6109 through 21-*  
13 *6116, and amendments thereto:*

14 (a) *"Access point" means the area within a ten foot radius outside*  
15 *of any doorway, open window or air intake leading into a building or*  
16 *facility that is not exempted pursuant to K.S.A. 2022 Supp. 21-6110(d),*  
17 *and amendments thereto.*

18 (b) *"Bar" means any indoor area that is operated and licensed for*  
19 *the sale and service of alcoholic beverages, including alcoholic liquor as*  
20 *defined in K.S.A. 41-102, and amendments thereto, or cereal malt*  
21 *beverages as defined in K.S.A. 41-2701, and amendments thereto, for*  
22 *on-premises consumption.*

23 (c) *"Employee" means any person who is employed by an employer*  
24 *in consideration for direct or indirect monetary wages or profit and any*  
25 *person who volunteers their services for a nonprofit entity.*

26 (d) *"Employer" means any person, partnership, corporation,*  
27 *association or organization, including municipal or nonprofit entities,*  
28 *that employs one or more individual persons.*

29 (e) *"Enclosed area" means all space between a floor and ceiling*  
30 *that is enclosed on all sides by solid walls, windows or doorways that*  
31 *extend from the floor to the ceiling, including all space therein screened*  
32 *by partitions that do not extend to the ceiling or are not solid or similar*  
33 *structures. For purposes of this section, the following shall not be*  
34 *considered an "enclosed area": (1) Rooms or areas, enclosed by walls,*  
35 *windows or doorways, having neither a ceiling nor a roof and that are*  
36 *completely open to the elements and weather at all times; and (2) rooms*

1 *or areas, enclosed by walls, fences, windows or doorways and a roof or*  
2 *ceiling, having openings that are permanently open to the elements and*  
3 *weather and that comprise an area that is at least 30% of the total*  
4 *perimeter wall area of such room or area.*

5 *(f) "Food service establishment" means any place in which food is*  
6 *served or is prepared for sale or service on the premises. Such term shall*  
7 *include, but not be limited to, fixed or mobile restaurants, coffee shops,*  
8 *cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich*  
9 *shops, soda fountains, taverns, private clubs, roadside kitchens,*  
10 *commissaries and any other private, public or nonprofit organization or*  
11 *institution routinely serving food and any other eating or drinking*  
12 *establishment or operation where food is served or provided for the*  
13 *public with or without charge.*

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

23 *(h) "~~Medical care facility~~" means a physician's office, general*  
24 *hospital, special hospital, ambulatory surgery center or recuperation*  
25 *center, as defined by K.S.A. 65-425, and amendments thereto, and any*  
26 *psychiatric hospital licensed under K.S.A. 39-2001 et seq., and*  
27 *amendments thereto.*

28 *(~~h~~)(h) "Outdoor recreational facility" means a hunting, fishing,*  
29 *shooting or golf club, business or enterprise operated primarily for the*  
30 *benefit of its owners, members and their guests and not normally open to*  
31 *the general public.*

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

41 *(~~j~~)(j) "Private club" means an outdoor recreational facility*  
42 *operated primarily for the use of its owners, members and their guests*  
43 *that in its ordinary course of business is not open to the general public*

1 *for which use of its facilities has substantial dues or membership fee*  
2 *requirements for its members.*

3 ~~(h)~~(k) *"Public building" means any building owned or operated by:*  
4 *(1) The state, including any branch, department, agency, bureau,*  
5 *commission, authority or other instrumentality thereof; (2) any county,*  
6 *city, township, other political subdivision, including any commission,*  
7 *authority, agency or instrumentality thereof; or (3) any other separate*  
8 *corporate instrumentality or unit of the state or any municipality.*

9 ~~(i)~~(l) *"Public meeting" means any meeting open to the public*  
10 *pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any*  
11 *other law of this state.*

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

23 ~~(k)~~(n) *"Smoking" means possession of a lighted cigarette, cigar,*  
24 *pipe or burning tobacco in any other form or device designed for the use*  
25 *of tobacco.*

26 ~~(l)~~(o) *"Tobacco shop" means any indoor area operated primarily*  
27 *for the retail sale of tobacco, tobacco products or smoking devices or*  
28 *accessories, and that derives not less than 65% of its gross receipts from*  
29 *the sale of tobacco.*

30 ~~(m)~~(p) *"Substantial dues or membership fee requirements" means*  
31 *initiation costs, dues or fees proportional to the cost of membership in*  
32 *similarly-situated outdoor recreational facilities that are not considered*  
33 *nominal and implemented to otherwise avoid or evade restrictions of a*  
34 *statewide ban on smoking.*

35 *Sec. 2. K.S.A. 2022 Supp. 21-6110 is hereby amended to read as*  
36 *follows: 21-6110. (a) It shall be unlawful, with no requirement of a*  
37 *culpable mental state, to smoke in an enclosed area or at a public*  
38 *meeting including, but not limited to:*

- 39 *(1) Public places;*  
40 *(2) taxicabs and limousines;*  
41 *(3) restrooms, lobbies, hallways and other common areas in public*  
42 *and private buildings, condominiums and other multiple-residential*  
43 *facilities;*

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

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

6       (6) *any place of employment.*

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

16       (c) *Notwithstanding any other provision of this section, K.S.A. 2022*  
17 *Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or*  
18 *other person in charge of an adult care home, as defined in K.S.A. 39-*  
19 *923, and amendments thereto, or a medical care facility, may designate a*  
20 *portion of such adult care home, or the licensed long-term care unit of*  
21 *such medical care facility, as a smoking area, and smoking may be*  
22 *permitted within such designated smoking area.*

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

24       (1) *The outdoor areas of any building or facility beyond the access*  
25 *points of such building or facility;*

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

29       (3) *a hotel or motel room rented to one or more guests if the total*  
30 *percentage of such hotel or motel rooms in such hotel or motel does not*  
31 *exceed 20%;*

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

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

39       ~~(6)~~(5) *that portion of a licensed long-term care unit of a medical*  
40 *care facility that is expressly designated as a smoking area by the*  
41 *proprietor or other person in charge of such medical care facility*  
42 *pursuant to subsection (c) and that is fully enclosed and ventilated and*  
43 *to which access is restricted to the residents and their guests;*

1       ~~(7)~~(6) *tobacco shops;*

2       ~~(8)~~(7) *a class A or class B club defined in K.S.A. 41-2601, and*  
3 *amendments thereto, which: (A) Held a license pursuant to K.S.A. 41-*  
4 *2606 et seq., and amendments thereto, as of January 1, 2009; and (B)*  
5 *notifies the secretary of health and environment in writing, not later*  
6 *than 90 days after the effective date of this act, that it wishes to continue*  
7 *to allow smoking on its premises;*

8       ~~(9)~~(8) *a private club in designated areas where minors are*  
9 *prohibited;*

10       ~~(10)~~(9) *any benefit cigar dinner or other cigar dinner of a*  
11 *substantially similar nature that:*

12       (A) *Is conducted specifically and exclusively for charitable*  
13 *purposes by a nonprofit organization which is exempt from federal*  
14 *income taxation pursuant to section 501(c)(3) of the federal internal*  
15 *revenue code of 1986;*

16       (B) *is conducted no more than once per calendar year by such*  
17 *organization; and*

18       (C) *has been held during each of the previous three years prior to*  
19 *January 1, 2011; and*

20       ~~(11)~~(10) *that portion of a medical or clinical research facility*  
21 *constituting a separately ventilated, secure smoking room dedicated and*  
22 *used solely and exclusively for clinical research activities conducted in*  
23 *accordance with regulatory authority of the United States or the state of*  
24 *Kansas, as determined by the director of alcoholic beverage control of*  
25 *the department of revenue.}*

26       ~~Section 1.~~ *{Sec. 3.}* K.S.A. 2022 Supp. 46-2305 is hereby amended to  
27 read as follows: 46-2305. ~~(a)~~If any federally recognized Indian tribe, as  
28 described in K.S.A. 74-9802(f), and amendments thereto, submits a  
29 request for negotiation of a gaming compact regarding sports wagering in  
30 accordance with K.S.A. 46-2302, and amendments thereto, the governor or  
31 the governor's designated representative shall negotiate in good faith with  
32 such Indian tribe to enter into such gaming compact.

33       ~~(b) No compact described in subsection (a) shall include sports~~  
34 ~~wagering beyond the boundaries of the compacting tribe's Indian lands,~~  
35 ~~within the meaning of the Indian gaming regulatory act, 25 U.S.C. § 2701~~  
36 ~~et seq.~~

37       ~~Sec. 2.~~ *{4.}* K.S.A. 2022 Supp. 74-8823 is hereby amended to read as  
38 follows: 74-8823. (a) There is hereby imposed a tax on the gross sum  
39 wagered by the parimutuel method as follows:

40       (1) Of the total daily takeout from parimutuel pools for live horse  
41 races conducted in this state, a tax at the rate of  $\frac{3}{18}$ ;

42       (2) except as provided by subsection (a)(3), for live greyhound races  
43 conducted in this state at a racetrack facility for the racing of only

1 greyhounds:

2 (A) During the first four years when racing with parimutuel wagering  
3 is conducted at such facility, a tax at the rate of  $\frac{3}{18}$  of the total daily  
4 takeout from parimutuel pools for live greyhound races; and

5 (B) thereafter, from parimutuel pools for each live greyhound  
6 performance, a tax at the rate of  $\frac{3}{18}$  of the first \$400,000 wagered,  $\frac{4}{18}$  of  
7 the next \$200,000 wagered and  $\frac{5}{18}$  of any amounts wagered exceeding  
8 \$600,000;

9 (3) for live greyhound races conducted in this state at a dual racetrack  
10 facility or at a racetrack facility owned by a licensee whose license  
11 authorizes the construction of a dual racetrack facility:

12 (A) During the first seven years when racing with parimutuel  
13 wagering is conducted at such facility, a tax at the rate of  $\frac{3}{18}$  of the total  
14 daily takeout from parimutuel pools for live greyhound races; and

15 (B) thereafter, from parimutuel pools for each live greyhound  
16 performance, a tax at the rate of  $\frac{3}{18}$  of the first \$600,000 wagered,  $\frac{4}{18}$  of  
17 the next \$200,000 wagered and  $\frac{5}{18}$  of any amounts wagered exceeding  
18 \$800,000;

19 (4) of the total daily takeout from amounts wagered in this  
20 jurisdiction on simulcast races displayed in this state, a tax at the rate of  
21  $\frac{3}{18}$ ; and

22 (5) of the total amount wagered on historical horse races, a tax at the  
23 rate of 3%.

24 (b) The tax imposed by this section shall be ~~no~~ not less than 3% nor  
25 more than 6% of the total money wagered each day at a racetrack facility.

26 (c) The tax imposed by this section shall be remitted to the  
27 commission by each organization licensee by the next business day  
28 following the day on which the wagers took place. The commission shall  
29 remit any such tax moneys received to the state treasurer in accordance  
30 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
31 receipt of each ~~such~~ remittance *made pursuant to subsection (a)(1)*  
32 *through (4)*, the state treasurer shall deposit the entire amount in the state  
33 treasury to the credit of the state racing fund created by K.S.A. 74-8826,  
34 and amendments thereto, except as provided by K.S.A. 74-8838, and  
35 amendments thereto. *Upon receipt of each remittance made pursuant to*  
36 *subsection (a)(5), the state treasurer shall deposit the entire amount in the*  
37 *state treasury and credit  $\frac{1}{3}$  of the amount to the Kansas horse breeding*  
38 *development fund created by K.S.A. 74-8829, and amendments thereto,*  
39 *and  $\frac{2}{3}$  of the amount to the horse fair racing benefit fund created by*  
40 *K.S.A. 74-8838, and amendments thereto.*

41 (d) The commission shall audit and verify that the amount of tax  
42 received from each organization licensee hereunder is correct.

43 (e) Nothing in this section shall be construed to impose any tax on

1 amounts wagered on electronic gaming machine games operated pursuant  
2 to the Kansas expanded lottery act.

3 Sec. ~~3~~ {5.} K.S.A. 2022 Supp. {21-6109, 21-6110, }46-2305 and 74-  
4 8823 are hereby repealed.

5 Sec. ~~4~~ {6.} This act shall take effect and be in force from and after its  
6 publication in the Kansas register.