

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2022 REGULAR SESSION
Unofficial Document

Amend printed copy of **SB 93/SCS 1**

On page 2, after line 24, by inserting the following:

"➔SECTION 2. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ
AS FOLLOWS:

As used in Sections 2 to 7 of this Act:

- (1) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or nonprofit, including but not limited to retail establishments where goods or services are sold, professional corporations, and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered;
- (2) "Cigar bar" means a business, whether or not licensed to serve alcohol, that is open to the public and is designated for the smoking of premium handmade cigars purchased on the premises or elsewhere;
- (3) "Citation officer" means an employee of the Department for Public Health, a local health department, or a unit of local government who is not a peace officer and who has a duty to enforce Sections 2 to 7 of this Act;
- (4) "Employee" means a person who works for an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a for-profit or nonprofit entity;

Amendment No. SFA 3

Rep. Sen. Ralph Alvarado

Committee Amendment _____

Floor Amendment _____

Adopted: _____

Rejected: _____

Signed: _____

LRC Drafter: _____

Date: _____

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- (5) "Employer" means a person, business, government agency, municipal corporation, trust, or nonprofit entity that employs the services of one (1) or more employees;
- (6) "Enclosed area" means all space between a floor and a ceiling that is bounded on at least two (2) sides by walls, doorways, or windows, whether open or closed. As used in this subsection, a "wall" includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent, and whether or not it contains openings of any kind;
- (7) "Local government" means a city, county, charter county, consolidated local government, urban-county government, or unified local government;
- (8) (a) "Place of employment" means an area under the control of a public or private employer, including but not limited to work areas, private offices, employee lounges, restrooms, conference and meeting rooms, classrooms, employee cafeterias, hallways, temporary offices, and motor vehicles carrying passengers for hire.
- (b) "Place of employment" does not include a private residence, unless it is used as a for-hire child-care facility, adult-day-care facility, or health-care facility;
- (9) "Private club" means an organization, whether incorporated or not, that:
- (a) Is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times;
- (b) Is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain;
- (c) Only sells alcoholic beverages incidental to its operation;
- (d) Is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, and has bylaws, a constitution, or both to govern its activities; and

- (e) Has been granted an exemption from the payment of federal tax as a club under 26 U.S.C. sec. 501;
- (10) (a) "Public place" means an area to which the public is invited or permitted, including but not limited to restaurants; bars licensed to sell alcoholic beverages by the drink, either with or without food being served; shopping malls; businesses; and arenas.
- (b) "Public place" does not include a private residence, unless it is used at any time as a for-hire child-care facility, adult-day-care facility, or health-care facility;
- (11) "Smoke" or "smoking" means:
- (a) The inhaling, exhaling, burning, or carrying of any lighted or heated cigar, cigarette, hookah, pipe, plant, or any other lighted or heated tobacco product or other material intended for inhalation, in any manner or any form;
- (b) The use of a vapor product as defined in KRS 438.305, which creates a vapor, aerosol, or mist in any manner or in any form; or
- (c) The use of any oral smoking device for the purpose of circumventing the prohibition of smoking in Section 3 of this Act;
- (12) "Tobacco business" means a facility that is owned or leased by a tobacco manufacturer or wholesaler for the promotion, testing, research, or development of tobacco products. For the purposes of Sections 2 to 7 of this Act, a tobacco manufacturer or wholesaler shall be an establishment that generates seventy-five percent (75%) or more of its total annual gross revenues from the sale of tobacco products; and
- (13) "Tobacconist" means a retail establishment that sells or is in the business of blending and selling tobacco products where the majority of the transactions of the establishment include tobacco, tobacco-related products, and accessories.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

- (1) A person shall not smoke in an enclosed public place or an enclosed place of employment.
- (2) A person shall not smoke within fifteen (15) feet from entrances, exits, operable windows, or ventilation intakes that serve an enclosed area where smoking is prohibited.
- (3) Each public place and place of employment where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. "No smoking" signs or the international "no smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall meet the requirements of this subsection.
- (4) The owner, operator, manager, or person in control of a public place or place of employment where smoking is prohibited by this section shall remove all ashtrays and similar receptacles for smoking products from any area where smoking is prohibited. This subsection shall not apply to ashtrays and similar receptacles for smoking products which are displayed for sale or aesthetic purposes only.
- (5) (a) All bed and breakfast establishments, hotels, inns, lodges, motels, boarding homes, resorts, or other similar public accommodations that are rented to guests shall prohibit smoking in all sleeping quarters and enclosed areas.

(b) A private residence that serves as a child-care facility, adult-day-care facility, or health-care facility shall prohibit smoking in all enclosed areas at all times.
- (6) The prohibition on smoking in a place of employment shall be communicated to all existing employees within thirty (30) days after the effective date of this Act and, after the effective date of this Act, to all prospective employees upon their application for employment by an employer.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ
AS FOLLOWS:

- (1) Notwithstanding any provision of Section 3 of this Act, any employer, owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment may designate a nonenclosed area of a public place or place of employment as an area where smoking is also prohibited if the employer, owner, occupant, lessee, operator, manager, or other person conspicuously posts signs prohibiting smoking at each public entrance to an area where smoking is prohibited.
- (2) Nothing in Sections 2 to 7 of this Act shall be interpreted or construed to permit smoking where it is otherwise restricted by law or administrative regulation.
- (3) Nothing in Sections 2 to 7 of this Act shall be construed to:
- (a) Prevent a local government from adopting local ordinances or regulations relating to smoking in public places, places of employment, and nonenclosed areas that are more restrictive than Sections 2 to 7 of this Act;
 - (b) Repeal or preempt any existing local ordinances or regulations that provide restrictions on smoking; or
 - (c) Prevent a local government, local health department, or local board of health from implementing or enforcing Sections 2 to 7 of this Act.
- (4) A local ordinance or regulation, local health department regulation, or local board of health regulation relating to smoking shall not provide for incarceration as a sanction for a violation of the ordinance or regulation.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

- (1) (a) Sections 2 to 6 of this Act shall be enforced by all peace officers, designated employees of the Department for Public Health, designated employees of the local health department, and designated employees of a unit of local government.
- (b) An employee of the Department for Public Health, local health department, or unit

- of local government designated to enforce Sections 2 to 7 of this Act shall be deemed a citation officer solely for the purpose of enforcing Sections 2 to 7 of this Act.
- (c) A peace officer may issue a uniform citation and a citation officer may issue a uniform smoking violation citation for a violation of Sections 2 to 7 of this Act, a local ordinance, a local health department regulation, or a local board of health regulation relating to smoking, which is committed in the officer's presence.
- (d) A citation officer shall not have the authority to make an arrest.
- (2) (a) The Department for Public Health employees, designated local health department employees, and designated employees of a unit of local government shall utilize the uniform smoking violation citation specified in Section 9 of this Act to cite violators of Sections 2 to 7 of this Act.
- (b) A local government may, by ordinance, grant citation officer powers to code enforcement officers solely for the purpose of issuing smoking violation citations specified in Section 9 of this Act to cite violators of Sections 2 to 7 of this Act.
- (c) Any citation or smoking violation citation issued pursuant to this section shall cite the alleged violator to the District Court of the county in which the violation occurred.
- (3) An owner, manager, operator, or employee of a public place or place of employment shall direct a person, including an employee, who is smoking in violation of Section 3 of this Act to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- (4) This section shall not apply to subsection (1) of Section 4 of this Act.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ AS FOLLOWS:

- (1) A person or employer shall not discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential apartment, condominium, or assisted-living facility because that employee, applicant, customer, or resident exercises any rights afforded by Sections 2 to 7 of this Act, or reports or seeks enforcement of Sections 2 to 7 of this Act. A violation of this subsection shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each violation.
- (2) A person who smokes in an area where smoking is prohibited by Section 3 of this Act shall be guilty of a violation, punishable by a fine not exceeding twenty-five dollars (\$25).
- (3) Except as otherwise provided in subsection (1) of this section, a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with Sections 2 to 7 of this Act shall be guilty of a violation, punishable by a fine not exceeding fifty dollars (\$50).
- (4) Each day that a violation occurs shall be a separate violation, but a maximum fine under this section shall not exceed ten thousand dollars (\$10,000) in any calendar year.
- (5) A collected fine imposed under this section shall be distributed to the Department for Public Health, local health department, local government employing the code enforcement officer, or law enforcement agency which issued the citation.
- (6) Notwithstanding any other statute to the contrary, court costs, fees, taxes, or other charges shall not be assessed for a violation under Sections 2 to 7 of this Act.
- (7) This section shall not apply to subsection (1) of Section 4 of this Act.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO READ

AS FOLLOWS:

Sections 2 to 7 of this Act shall not apply to:

- (1) A smoking laboratory operated by an institution of higher education, provided that any smoking is done by machine;
- (2) A smoking laboratory operated by a tobacco business engaged in the manufacturing or wholesale of smoking products;
- (3) A laboratory testing the fire-safe qualities of tobacco products, provided that any smoking is done by a machine;
- (4) Any business that conducts bona fide scientific, psychological, or other medical research on tobacco products if the research is conducted in an enclosed space not open to the public, even if the business is otherwise located in a public place or a place of employment or is a place of employment;
- (5) A tobacco barn that is used primarily for the purpose of air-curing, fire-curing, or storing tobacco leaf;
- (6) An agricultural building used as a workshop or tool shed, or for any other purpose on a private farm;
- (7) A tobacco business if smoking is necessary to marketing research of the tobacco business's products;
- (8) A private club; or
- (9) Cigar bars and tobacconists that meet the following criteria:
 - (a) Within thirty (30) days of the effective date of this Act and by January 31 of each subsequent year, the owner or operator of a cigar bar or tobacconist shall file an affidavit with the Department for Public Health stating that it complies with the requirements of this subsection;
 - (b) For each calendar year after the first calendar year that the affidavit required

under this subsection is filed:

1. The cigar bar shall generate ten percent (10%) or more of its total gross annual income from the on-site sale of cigars, accessories, and the rental of on-site humidors; or
 2. The tobacconist shall generate ten percent (10%) or more of its total gross annual income from the on-site sale of tobacco, tobacco-related products, and accessories;
- (c) The cigar bar or tobacconist is located on premises that are physically separated from an adjacent establishment where smoking is prohibited pursuant to Sections 2 to 7 of this Act. As used in this paragraph, "physically separated" means an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from the floor to the ceiling;
- (d) The cigar bar or tobacconist has installed on its premises an on-site humidor; and
- (e) 1. The cigar bar prohibits entry to a person under the age of twenty-one (21) during the time that the cigar bar is open for business.
2. The tobacconist prohibits entry to a person under the age of eighteen (18) during the time that the tobacconist is open for business.

➔Section 8. KRS 344.040 is amended to read as follows:

- (1) It is an unlawful practice for an employer:
 - (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any state law, local ordinance, local board of health regulation, or workplace policy

- concerning smoking;
- (b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's race, color, religion, national origin, sex, or age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any state law, local ordinance, local board of health regulation, or workplace policy concerning smoking;
- (c) To fail to make reasonable accommodations for any employee with limitations related to pregnancy, childbirth, or a related medical condition who requests an accommodation, including but not limited to the need to express breast milk, unless the employer can demonstrate the accommodation would impose an undue hardship on the employer's program, enterprise, or business. The following shall be required as to reasonable accommodations:
1. An employee shall not be required to take leave from work if another reasonable accommodation can be provided;
 2. The employer and employee shall engage in a timely, good faith, and interactive process to determine effective reasonable accommodations; and
 3. If the employer has a policy to provide, would be required to provide, is currently providing, or has provided a similar accommodation to other classes of employees, then a rebuttable presumption is created that the accommodation does not impose an undue hardship on the employer; or
- (d) To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning

smoking.

- (2) (a) A difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan shall not be deemed to be an unlawful practice in violation of this section.
- (b) The offering of incentives or benefits offered by an employer to employees who participate in a smoking cessation program shall not be deemed to be an unlawful practice in violation of this section.
- (3) (a) An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, including the right to reasonable accommodations, to:
 1. New employees at the commencement of employment; and
 2. Existing employees not later than thirty (30) days after June 27, 2019.
- (b) An employer shall conspicuously post a written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, including the right to reasonable accommodations, at the employer's place of business in an area accessible to employees.

➔Section 9. KRS 431.450 is amended to read as follows:

- (1) The Department of Kentucky State Police in consultation with the Transportation Cabinet shall design, print, and distribute to all law enforcement agencies in the Commonwealth a uniform citation.
- (2) The citation shall:
 - (a) Be approved by the Supreme Court;
 - (b) Consist of an original document and five (5) copies;
 - (c) Be serially numbered in such a manner that the year of issue and the individual citation number may be readily ascertained; and

- (d) Contain such other information as may be required by the Supreme Court.
- (3) The Circuit Court clerk shall maintain a system of accountability for all citations issued in accordance with rules and regulations issued by the Supreme Court to assure that citations are not wrongfully destroyed, tampered with, or otherwise compromised in any manner.
- (4) All peace officers in the Commonwealth shall use the uniform citation for all violations of the traffic laws and for all felonies, misdemeanors, and violations.
- (5) (a) All peace officers shall use the uniform citation to enforce Sections 2 to 7 of this Act.**
- (b) The Department of Kentucky State Police may create and issue to agencies enforcing Sections 2 to 7 of this Act a "uniform smoking violation citation," which shall be utilized by citation officers as defined in Section 2 of this Act for citing violators of Sections 2 to 7 of this Act. The uniform smoking violation citation shall be serially numbered and contain the same basic information as contained in a uniform citation, with any modifications as determined by the department by administrative regulation.**

➔Section 10. The following KRS sections are repealed:

- 61.165 Smoking policy for governmental office buildings or workplaces and postsecondary education institutions.
- 61.167 Smoking prohibited in public areas of Capitol and Capitol Annex -- "Public area" defined -- Each branch may designate smoking areas -- Requirements for smoking area.
- 196.245 Commissioner may permit or prohibit smoking by inmates.
- 438.050 Use of alternative nicotine products, tobacco products, and vapor products on school premises -- Exception.

➔Section 11. Sections 2 to 7 of this Act may be cited as the Smokefree Kentucky Act."