

1 AN ACT prohibiting smoking in public places and places of employment.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 438 IS CREATED TO  
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 6 of this Act:*

6 *(1) "Business" means a sole proprietorship, partnership, joint venture, corporation,*  
7 *or other business entity, either for-profit or nonprofit, including but not limited to*  
8 *retail establishments where goods or services are sold, professional corporations,*  
9 *and other entities where legal, medical, dental, engineering, architectural, or*  
10 *other professional services are delivered;*

11 *(2) "Cigar bar" means a business, whether or not licensed to serve alcohol, that is*  
12 *open to the public and is designated for the smoking of premium handmade*  
13 *cigars purchased on the premises or elsewhere;*

14 *(3) "Citation officer" means an employee of the Department for Public Health, a*  
15 *local health department, or a unit of local government who is not a peace officer*  
16 *and who has a duty to enforce Sections 1 to 6 of this Act;*

17 *(4) "Employee" means a person who works for an employer in consideration for*  
18 *direct or indirect monetary wages or profit, or a person who volunteers his or her*  
19 *services for a for-profit or nonprofit entity;*

20 *(5) "Employer" means a person, business, government agency, municipal*  
21 *corporation, trust, or nonprofit entity that employs the services of one (1) or more*  
22 *employees;*

23 *(6) "Enclosed area" means all space between a floor and a ceiling that is bounded*  
24 *on at least two (2) sides by walls, doorways, or windows, whether open or closed.*  
25 *As used in this subsection, a "wall" includes any retractable divider, garage door,*  
26 *or other physical barrier, whether temporary or permanent, and whether or not it*  
27 *contains openings of any kind;*

1 (7) "Local government" means a city, county, charter county, consolidated local  
2 government, urban-county government, or unified local government;

3 (8) (a) "Place of employment" means an area under the control of a public or  
4 private employer, including but not limited to work areas, private offices,  
5 employee lounges, restrooms, conference and meeting rooms, classrooms,  
6 employee cafeterias, hallways, temporary offices, and motor vehicles  
7 carrying passengers for hire.

8 (b) "Place of employment" does not include a private residence, unless it is  
9 used as a for-hire child-care facility, adult-day-care facility, or health-care  
10 facility;

11 (9) "Private club" means an organization, whether incorporated or not, that:

12 (a) Is the owner, lessee, or occupant of a building or portion thereof used  
13 exclusively for club purposes at all times;

14 (b) Is operated solely for a recreational, fraternal, social, patriotic, political,  
15 benevolent, or athletic purpose, but not for pecuniary gain;

16 (c) Only sells alcoholic beverages incidental to its operation;

17 (d) Is managed by a board of directors, executive committee, or similar body  
18 chosen by the members at an annual meeting, and has bylaws, a  
19 constitution, or both to govern its activities; and

20 (e) Has been granted an exemption from the payment of federal tax as a club  
21 under 26 U.S.C. sec. 501;

22 (10) (a) "Public place" means an area to which the public is invited or permitted,  
23 including but not limited to restaurants; bars licensed to sell alcoholic  
24 beverages by the drink, either with or without food being served; shopping  
25 malls; businesses; and arenas.

26 (b) "Public place" does not include a private residence, unless it is used at any  
27 time as a for-hire child-care facility, adult-day-care facility, or health-care

1 facility;

2 (11) "Smoke" or "smoking" means:

3 (a) The inhaling, exhaling, burning, or carrying of any lighted or heated cigar,  
4 cigarette, hookah, pipe, plant, or any other lighted or heated tobacco  
5 product or other material intended for inhalation, in any manner or any  
6 form;

7 (b) The use of a vapor product as defined in KRS 438.305, which creates a  
8 vapor, aerosol, or mist in any manner or in any form; or

9 (c) The use of any oral smoking device for the purpose of circumventing the  
10 prohibition of smoking in Section 2 of this Act;

11 (12) "Tobacco business" means a facility that is owned or leased by a tobacco  
12 manufacturer or wholesaler for the promotion, testing, research, or development  
13 of tobacco products. For the purposes of Sections 1 to 6 of this Act, a tobacco  
14 manufacturer or wholesaler shall be an establishment that generates seventy-five  
15 percent (75%) or more of its total annual gross revenues from the sale of tobacco  
16 products; and

17 (13) "Tobacconist" means a retail establishment that sells or is in the business of  
18 blending and selling tobacco products where the majority of the transactions of  
19 the establishment include tobacco, tobacco-related products, and accessories.

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

22 (1) A person shall not smoke in an enclosed public place or an enclosed place of  
23 employment.

24 (2) A person shall not smoke within fifteen (15) feet from entrances, exits, operable  
25 windows, or ventilation intakes that serve an enclosed area where smoking is  
26 prohibited.

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

(1) Notwithstanding any provision of Section 2 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

1       conspicuously posts signs prohibiting smoking at each public entrance to an area  
2       where smoking is prohibited.

3       (2) Nothing in Sections 1 to 6 of this Act shall be interpreted or construed to permit  
4       smoking where it is otherwise restricted by law or administrative regulation.

5       (3) Nothing in Sections 1 to 6 of this Act shall be construed to:

6           (a) Prevent a local government from adopting local ordinances or regulations  
7           relating to smoking in public places, places of employment, and  
8           nonenclosed areas that are more restrictive than Sections 1 to 6 of this Act;

9           (b) Repeal or preempt any existing local ordinances or regulations that provide  
10          restrictions on smoking; or

11          (c) Prevent a local government, local health department, or local board of  
12          health from implementing or enforcing Sections 1 to 6 of this Act.

13       (4) A local ordinance or regulation, local health department regulation, or local  
14       board of health regulation relating to smoking shall not provide for incarceration  
15       as a sanction for a violation of the ordinance or regulation.

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

18       (1) (a) Sections 1 to 6 of this Act shall be enforced by all peace officers, designated  
19       employees of the Department for Public Health, designated employees of the  
20       local health department, and designated employees of a unit of local  
21       government.

22       (b) An employee of the Department for Public Health, local health department,  
23       or unit of local government designated to enforce Sections 1 to 6 of this Act  
24       shall be deemed a citation officer solely for the purpose of enforcing  
25       Sections 1 to 6 of this Act.

26       (c) A peace officer may issue a uniform citation and a citation officer may  
27       issue a uniform smoking violation citation for a violation of Sections 1 to 6

1           of this Act, a local ordinance, a local health department regulation, or a  
2           local board of health regulation relating to smoking, which is committed in  
3           the officer's presence.

4           (d) A citation officer shall not have the authority to make an arrest.

5   (2) (a) The Department for Public Health employees, designated local health  
6           department employees, and designated employees of a unit of local  
7           government shall utilize the uniform smoking violation citation specified in  
8           Section 8 of this Act to cite violators of Sections 1 to 6 of this Act.

9           (b) A local government may, by ordinance, grant citation officer powers to code  
10           enforcement officers solely for the purpose of issuing smoking violation  
11           citations specified in Section 8 of this Act to cite violators of Sections 1 to 6  
12           of this Act.

13           (c) Any citation or smoking violation citation issued pursuant to this section  
14           shall cite the alleged violator to the District Court of the county in which the  
15           violation occurred.

16   (3) An owner, manager, operator, or employee of a public place or place of  
17           employment shall direct a person, including an employee, who is smoking in  
18           violation of Section 2 of this Act to extinguish the product being smoked. If the  
19           person does not stop smoking, the owner, manager, operator, or employee shall  
20           refuse service and shall immediately ask the person to leave the premises. If the  
21           person in violation refuses to leave the premises, the owner, manager, operator,  
22           or employee shall contact a law enforcement agency.

23   (4) This section shall not apply to subsection (1) of Section 3 of this Act.

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

26   (1) A person or employer shall not discharge, refuse to hire, or in any manner  
27           retaliate against an employee, applicant for employment, customer, or resident of

1 a multiple-unit residential apartment, condominium, or assisted-living facility  
2 because that employee, applicant, customer, or resident exercises any rights  
3 afforded by Sections 1 to 6 of this Act, or reports or seeks enforcement of Sections  
4 1 to 6 of this Act. A violation of this subsection shall be punishable by a fine not  
5 to exceed one thousand dollars (\$1,000) for each violation.

6 (2) A person who smokes in an area where smoking is prohibited by Section 2 of this  
7 Act shall be guilty of a violation, punishable by a fine not exceeding twenty-five  
8 dollars (\$25).

9 (3) Except as otherwise provided in subsection (1) of this section, a person who owns,  
10 manages, operates, or otherwise controls a public place or place of employment  
11 and who fails to comply with Sections 1 to 6 of this Act shall be guilty of a  
12 violation, punishable by a fine not exceeding fifty dollars (\$50).

13 (4) Each day that a violation occurs shall be a separate violation, but a maximum  
14 fine under this section shall not exceed ten thousand dollars (\$10,000) in any  
15 calendar year.

16 (5) A collected fine imposed under this section shall be distributed to the Department  
17 for Public Health, local health department, local government employing the code  
18 enforcement officer, or law enforcement agency which issued the citation.

19 (6) Notwithstanding any other statute to the contrary, court costs, fees, taxes, or  
20 other charges shall not be assessed for a violation under Sections 1 to 6 of this  
21 Act.

22 (7) This section shall not apply to subsection (1) of Section 3 of this Act.

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

25 Sections 1 to 6 of this Act shall not apply to:

26 (1) A smoking laboratory operated by an institution of higher education, provided  
27 that any smoking is done by machine;

- 1 (2) A smoking laboratory operated by a tobacco business engaged in the  
2 manufacturing or wholesale of smoking products;
- 3 (3) A laboratory testing the fire-safe qualities of tobacco products, provided that any  
4 smoking is done by a machine;
- 5 (4) Any business that conducts bona fide scientific, psychological, or other medical  
6 research on tobacco products if the research is conducted in an enclosed space  
7 not open to the public, even if the business is otherwise located in a public place  
8 or a place of employment or is a place of employment;
- 9 (5) A tobacco barn that is used primarily for the purpose of air-curing, fire-curing,  
10 or storing tobacco leaf;
- 11 (6) An agricultural building used as a workshop or tool shed, or for any other  
12 purpose on a private farm;
- 13 (7) A tobacco business if smoking is necessary to marketing research of the tobacco  
14 business's products;
- 15 (8) A private club; or
- 16 (9) Cigar bars and tobacconists that meet the following criteria:
- 17 (a) Within thirty (30) days of the effective date of this Act and by January 31 of  
18 each subsequent year, the owner or operator of a cigar bar or tobacconist  
19 shall file an affidavit with the Department for Public Health stating that it  
20 complies with the requirements of this subsection;
- 21 (b) For each calendar year after the first calendar year that the affidavit  
22 required under this subsection is filed:
- 23 1. The cigar bar shall generate ten percent (10%) or more of its total  
24 gross annual income from the on-site sale of cigars, accessories, and  
25 the rental of on-site humidors; or
- 26 2. The tobacconist shall generate ten percent (10%) or more of its total  
27 gross annual income from the on-site sale of tobacco, tobacco-related

1                   products, and accessories;

2           (c) The cigar bar or tobacconist is located on premises that are physically  
3           separated from an adjacent establishment where smoking is prohibited  
4           pursuant to Sections 1 to 6 of this Act. As used in this paragraph,  
5           "physically separated" means an area that is enclosed on all sides by any  
6           combination of solid walls, windows, or doors that extend from the floor to  
7           the ceiling;

8           (d) The cigar bar or tobacconist has installed on its premises an on-site  
9           humidor; and

10          (e) 1. The cigar bar prohibits entry to a person under the age of twenty-one  
11               (21) during the time that the cigar bar is open for business.

12               2. The tobacconist prohibits entry to a person under the age of eighteen  
13               (18) during the time that the tobacconist is open for business.

14          ➔Section 7. KRS 344.040 is amended to read as follows:

15       (1) It is an unlawful practice for an employer:

16           (a) To fail or refuse to hire, or to discharge any individual, or otherwise to  
17           discriminate against an individual with respect to compensation, terms,  
18           conditions, or privileges of employment, because of the individual's race,  
19           color, religion, national origin, sex, age forty (40) and over, because the  
20           person is a qualified individual with a disability, or because the individual is a  
21           smoker or nonsmoker, as long as the person complies with any state law, local  
22           ordinance, local board of health regulation, or workplace policy concerning  
23           smoking;

24           (b) To limit, segregate, or classify employees in any way which would deprive or  
25           tend to deprive an individual of employment opportunities or otherwise  
26           adversely affect status as an employee, because of the individual's race, color,  
27           religion, national origin, sex, or age forty (40) and over, because the person is

1 a qualified individual with a disability, or because the individual is a smoker  
2 or nonsmoker, as long as the person complies with any state law, local  
3 ordinance, local board of health regulation, or workplace policy concerning  
4 smoking;

5 (c) To fail to make reasonable accommodations for any employee with limitations  
6 related to pregnancy, childbirth, or a related medical condition who requests  
7 an accommodation, including but not limited to the need to express breast  
8 milk, unless the employer can demonstrate the accommodation would impose  
9 an undue hardship on the employer's program, enterprise, or business. The  
10 following shall be required as to reasonable accommodations:

- 11 1. An employee shall not be required to take leave from work if another  
12 reasonable accommodation can be provided;
- 13 2. The employer and employee shall engage in a timely, good faith, and  
14 interactive process to determine effective reasonable accommodations;  
15 and
- 16 3. If the employer has a policy to provide, would be required to provide, is  
17 currently providing, or has provided a similar accommodation to other  
18 classes of employees, then a rebuttable presumption is created that the  
19 accommodation does not impose an undue hardship on the employer; or

20 (d) To require as a condition of employment that any employee or applicant for  
21 employment abstain from smoking or using tobacco products outside the  
22 course of employment, as long as the person complies with any workplace  
23 policy concerning smoking.

24 (2) (a) A difference in employee contribution rates for smokers and nonsmokers in  
25 relation to an employer-sponsored health plan shall not be deemed to be an  
26 unlawful practice in violation of this section.

27 (b) The offering of incentives or benefits offered by an employer to employees

1           who participate in a smoking cessation program shall not be deemed to be an  
2           unlawful practice in violation of this section.

3       (3) (a) An employer shall provide written notice of the right to be free from  
4           discrimination in relation to pregnancy, childbirth, and related medical  
5           conditions, including the right to reasonable accommodations, to:

- 6           1. New employees at the commencement of employment; and
- 7           2. Existing employees not later than thirty (30) days after June 27, 2019.

8       (b) An employer shall conspicuously post a written notice of the right to be free  
9           from discrimination in relation to pregnancy, childbirth, and related medical  
10          conditions, including the right to reasonable accommodations, at the  
11          employer's place of business in an area accessible to employees.

12       ➔Section 8. KRS 431.450 is amended to read as follows:

13       (1) The Department of Kentucky State Police in consultation with the Transportation  
14          Cabinet shall design, print, and distribute to all law enforcement agencies in the  
15          Commonwealth a uniform citation.

16       (2) The citation shall:

- 17          (a) Be approved by the Supreme Court;
- 18          (b) Consist of an original document and five (5) copies;
- 19          (c) Be serially numbered in such a manner that the year of issue and the  
20             individual citation number may be readily ascertained; and
- 21          (d) Contain such other information as may be required by the Supreme Court.

22       (3) The Circuit Court clerk shall maintain a system of accountability for all citations  
23          issued in accordance with rules and regulations issued by the Supreme Court to  
24          assure that citations are not wrongfully destroyed, tampered with, or otherwise  
25          compromised in any manner.

26       (4) All peace officers in the Commonwealth shall use the uniform citation for all  
27          violations of the traffic laws and for all felonies, misdemeanors, and violations.

1 (5) (a) All peace officers shall use the uniform citation to enforce Sections 1 to 6 of  
2 this Act.

3 (b) The Department of Kentucky State Police may create and issue to agencies  
4 enforcing Sections 1 to 6 of this Act a "uniform smoking violation  
5 citation," which shall be utilized by citation officers as defined in Section 1  
6 of this Act for citing violators of Sections 1 to 6 of this Act. The uniform  
7 smoking violation citation shall be serially numbered and contain the same  
8 basic information as contained in a uniform citation, with any  
9 modifications as determined by the department by administrative regulation.

10 ➔Section 9. The following KRS sections are repealed:

11 61.165 Smoking policy for governmental office buildings or workplaces and  
12 postsecondary education institutions.

13 61.167 Smoking prohibited in public areas of Capitol and Capitol Annex -- "Public  
14 area" defined -- Each branch may designate smoking areas -- Requirements for  
15 smoking area.

16 196.245 Commissioner may permit or prohibit smoking by inmates.

17 438.050 Use of alternative nicotine products, tobacco products, and vapor products on  
18 school premises -- Exception.

19 ➔Section 10. Sections 1 to 6 of this Act may be cited as the Smokefree Kentucky  
20 Act.