

By: Representative Fleming

To: Public Health and Human Services

HOUSE BILL NO. 712

1 AN ACT TO CREATE THE MISSISSIPPI CLEAN INDOOR AIR ACT; TO  
 2 PROVIDE DEFINITIONS OF CERTAIN TERMS; TO PROHIBIT SMOKING IN ALL  
 3 ENCLOSED PUBLIC PLACES AND ALL ENCLOSED FACILITIES WITHIN PLACES  
 4 OF EMPLOYMENT IN THE STATE OF MISSISSIPPI; TO EXEMPT CERTAIN AREAS  
 5 FROM THE PROVISIONS OF THIS ACT; TO PROVIDE THAT ALL STATE, COUNTY  
 6 AND MUNICIPAL LICENSING OR REGULATORY AGENCIES SHALL ENFORCE THIS  
 7 ACT; TO PROVIDE THAT A PERSON OR AN EMPLOYER SHALL NOT DISCHARGE,  
 8 REFUSE TO HIRE OR IN ANY MANNER RETALIATE AGAINST ANY EMPLOYEE,  
 9 APPLICANT FOR EMPLOYMENT OR CUSTOMER BECAUSE THAT PERSON EXERCISES  
 10 ANY RIGHT UNDER THIS ACT; TO AUTHORIZE MUNICIPALITIES TO ADOPT  
 11 ORDINANCES REGULATING OR PROHIBITING SMOKING WITHIN THE  
 12 MUNICIPALITY, AS LONG AS THE ORDINANCE IS AT LEAST AS RESTRICTIVE  
 13 AS THE PROVISIONS OF THIS ACT; TO PROVIDE THAT ANY MUNICIPALITY  
 14 THAT HAS ADOPTED SUCH AN ORDINANCE IS EXEMPT FROM THE PROVISIONS  
 15 OF THIS ACT; AND FOR RELATED PURPOSES.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

17 **SECTION 1.** This act shall be known and may be cited as the  
 18 "Mississippi Clean Indoor Air Act."

19 **SECTION 2.** (1) The State of Mississippi finds that numerous  
 20 studies have found that tobacco smoke is a major contributor to  
 21 indoor air pollution, and that breathing secondhand smoke is a  
 22 cause of disease, including lung cancer, in nonsmokers. At  
 23 special risk are children, elderly people, individuals with  
 24 cardiovascular disease and individuals with impaired respiratory  
 25 function, including asthmatics and those with obstructive airway  
 26 disease.

27 (2) Health hazards induced by breathing secondhand smoke  
 28 include lung cancer, heart disease, respiratory infection and  
 29 decreased respiratory function, including bronchoconstriction and  
 30 bronchospasm.

31 (3) Accordingly, the State of Mississippi finds and declares  
 32 that the purposes of this act are:

33           (a) To protect the public health and welfare by  
34 prohibiting smoking in public places and places of employment;

35           (b) To guarantee the right of nonsmokers to breathe  
36 smoke-free air in public places and places of employment; and

37           (c) To recognize that the need to breathe smoke-free  
38 air shall have priority over the desire to smoke in public places  
39 and places of employment.

40           **SECTION 3.** The following words and phrases shall have the  
41 meanings as defined in this section unless the context clearly  
42 indicates otherwise:

43           (a) "Bar" means an area that is devoted to the serving  
44 of alcoholic beverages for consumption by guests on the premises  
45 and in which the serving of food is only incidental to the  
46 consumption of those beverages. The term "bar" does not include  
47 any establishment where tobacco smoke can filter into any area  
48 where smoking is prohibited through a passageway, ventilation  
49 system or any other means.

50           (b) "Employee" means any person who is employed by any  
51 employer in the consideration for direct or indirect monetary  
52 wages or profit and any person who volunteers his or her services.

53           (c) "Employer" means any person, partnership,  
54 corporation or nonprofit entity that employs the services of one  
55 or more individual persons.

56           (d) "Enclosed area" means all space between a floor and  
57 ceiling that is enclosed on all sides by solid walls or windows,  
58 excluding doors or passageways, that extend from the floor to the  
59 ceiling, including all space therein screened by partitions that  
60 do not extend to the ceiling or are not solid, office landscaping  
61 or similar structures.

62           (e) "Government building" means any building owned,  
63 rented, leased, occupied or operated by any county, municipality  
64 or any other political subdivision of the state; any public  
65 authority, commission, agency or public benefit corporation; or

66 any other separate corporate instrumentality or unit of state or  
67 local government. The term "government building" does not include  
68 state office buildings as defined in Section 29-5-161.

69 (f) "Place of employment" means any enclosed area under  
70 the control of a public or private employer that employees  
71 normally frequent during the course of employment, including, but  
72 not limited to, work areas, employee lounges and restrooms,  
73 conference and classrooms, employee cafeterias and hallways. A  
74 private residence is not a "place of employment" unless it is used  
75 as a child care facility, as defined in Section 43-20-5, adult day  
76 care or health care facility as licensed or regulated by the State  
77 Department of Public Health.

78 (g) "Public place" means any enclosed area to which the  
79 public is invited or in which the public is permitted, including,  
80 but not limited to, government buildings, financial institutions,  
81 educational facilities, health care facilities, laundromats,  
82 public transportation facilities, reception areas, retail food  
83 production and marketing establishments, retail service  
84 establishments, retail stores, theaters, sports arenas and  
85 convention centers. A private residence is not a "public place."

86 (h) "Restaurant" means any coffee shop, cafeteria,  
87 sandwich stand, private or public school cafeteria, or any other  
88 eating establishment that gives or offers for sale food to the  
89 public, guests or employees, as well as kitchens in which food is  
90 prepared on the premises for serving elsewhere, including catering  
91 facilities. The term "restaurant" does not include a cocktail  
92 lounge or tavern if the cocktail lounge or tavern is a "bar" as  
93 defined in this section.

94 (i) "Retail tobacco store" means a retail store  
95 utilized primarily for the sale of tobacco products and  
96 accessories and in which the sale of other products is merely  
97 incidental.

98           (j) "Smoking" means inhaling, exhaling, burning,  
99 carrying or otherwise possessing any lighted cigarette, cigar,  
100 pipe or any other object or device of any form that contains  
101 lighted tobacco or any other smoking product.

102           (k) "Sports arena" means sports pavilions, gymnasiums,  
103 health spas, boxing arenas, swimming pools, roller and ice rinks,  
104 bowling alleys and other similar places where members of the  
105 general public assemble either to engage in or witness physical  
106 exercise, athletic competition or other sports entertainment  
107 events.

108           **SECTION 4.** (1) Smoking is prohibited in all enclosed public  
109 places in the State of Mississippi.

110           (2) Smoking is prohibited in all enclosed facilities within  
111 a place of employment. This includes common work areas,  
112 auditoriums, classrooms, conference and meeting rooms, private  
113 offices, elevators, hallways, medical facilities, cafeterias,  
114 employee lounges, stairs, restrooms, and all other enclosed  
115 facilities.

116           **SECTION 5.** (1) Notwithstanding any other provision of this  
117 act to the contrary, the following areas are not subject to the  
118 provisions of this act:

119           (a) Private residences, except when used as a licensed  
120 child care facility.

121           (b) Private clubs and associations.

122           (c) Hotel and motel rooms.

123           (d) Retail tobacco stores.

124           (e) Restaurants.

125           (f) Bars.

126           (g) Dance clubs.

127           (h) Adult entertainment establishments.

128           (i) Casinos and other gaming establishments licensed by  
129 the Mississippi Gaming Commission.

130 (2) Any owner, operator, manager or other person who  
131 controls any establishment described in this section may impose  
132 restrictions on smoking, including the prohibition of smoking, in  
133 the establishment.

134 **SECTION 6.** (1) Every public place where smoking is  
135 prohibited by this act shall have posted at every entrance a  
136 conspicuous sign clearly stating that smoking is prohibited.

137 (2) All ashtrays and other smoking paraphernalia shall be  
138 removed from any area where smoking is prohibited by this act by  
139 the owner, operator, manager or other person having control of the  
140 area.

141 **SECTION 7.** (1) This act shall be enforced by all state,  
142 county and municipal licensing or regulatory agencies.

143 (2) Any state, county or municipal licensing or regulatory  
144 agency shall require, while an establishment is undergoing  
145 otherwise mandated inspection, licensing or certification, a  
146 "self-certification" from the owner, manager, operator or other  
147 person having control of the establishment that all requirements  
148 of this act have been complied with.

149 (3) Any state, county or municipal licensing or regulatory  
150 agency may adopt all regulations necessary to enforce the  
151 provisions of this act.

152 (4) In addition to enforcement by licensing and regulatory  
153 agencies, private citizens may bring legal action to enforce this  
154 act.

155 **SECTION 8.** A person or employer shall not discharge, refuse  
156 to hire or in any manner retaliate against any employee, applicant  
157 for employment or customer because the employee, applicant or  
158 customer exercises any right to a smoke-free environment afforded  
159 by this act.

160 **SECTION 9.** This act shall not be interpreted or construed to  
161 permit smoking where it is otherwise restricted by other  
162 applicable laws.

163           **SECTION 10.** Any municipality may adopt an ordinance to  
164 regulate or prohibit smoking within the municipality, as long as  
165 the ordinance is at least as restrictive as the provisions of this  
166 act. Any municipality that has adopted such an ordinance, whether  
167 it was adopted before or after the effective date of this act, is  
168 exempt from the provisions of this act.

169           **SECTION 11.** This act shall take effect and be in force from  
170 and after its passage.