

By: Representative Fleming

To: Conservation and Water Resources

HOUSE BILL NO. 123

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 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.