

By: Senator(s) Dawkins

To: Public Health and Welfare

SENATE BILL NO. 2622

1 AN ACT TO CREATE THE MISSISSIPPI GULF COAST SMOKE-FREE
2 FAMILIES ACT; TO PROVIDE DEFINITIONS OF CERTAIN TERMS; TO PROHIBIT
3 SMOKING IN ENCLOSED PUBLIC PLACES IN THE SIX GULF COAST COUNTIES
4 IN THE STATE OF MISSISSIPPI; TO PROVIDE THAT EMPLOYERS ARE
5 RESPONSIBLE FOR PROVIDING A SMOKE-FREE WORKPLACE FOR ALL EMPLOYEES
6 AND TO PRESCRIBE CERTAIN STANDARDS FOR SMOKING BREAK ROOMS IN SUCH
7 COUNTIES; TO SPECIFY THE AREAS WHERE SMOKING IS NOT REGULATED IN
8 SUCH COUNTIES; TO PROVIDE FOR THE POSTING OF NO SMOKING SIGNS IN
9 SUCH COUNTIES; TO DIRECT THE STATE BOARD OF HEALTH TO ADOPT
10 REGULATIONS AND PENALTIES REGARDING VIOLATIONS OF THIS ACT IN SUCH
11 COUNTIES; TO AMEND SECTION 29-5-161, MISSISSIPPI CODE OF 1972, TO
12 PROVIDE THAT THERE SHALL BE NO DESIGNATED SMOKING AREAS IN STATE
13 OFFICE BUILDINGS LOCATED IN SUCH COUNTIES AND TO PROVIDE THAT
14 SMOKING PROHIBITIONS APPLY TO ANY GOVERNMENT BUILDING; TO AMEND
15 SECTION 97-32-27, MISSISSIPPI CODE OF 1972, TO PROHIBIT SMOKING IN
16 ALL PUBLIC AND PRIVATE SCHOOL BUILDINGS AND FACILITIES, AND TO
17 PROHIBIT SMOKING IN ALL PRIVATE UNIVERSITY AND COLLEGE BUILDINGS
18 AND FACILITIES IN THE SIX GULF COAST COUNTIES IN MISSISSIPPI; AND
19 FOR RELATED PURPOSES.

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

21 **SECTION 1.** This act shall be known and may be cited as the
22 "Mississippi Gulf Coast Smoke-Free Families Act."

23 **SECTION 2.** The following words and phrases shall have the
24 meanings ascribed in this section and shall only be applicable in
25 the following counties in Mississippi: Harrison, Jackson,
26 Hancock, Pearl River, Stone and George, unless the context clearly
27 indicates otherwise:

28 (a) "Bar" means an area that is devoted to the serving
29 of alcoholic beverages for consumption by guests on the premises
30 in which the serving of food is only incidental to the consumption
31 of those beverages. For the purposes of this paragraph, the term
32 "bar" does not include any establishment where cigarette smoke can
33 filter into any area where smoking is prohibited through a
34 passageway, ventilation system or any other means.

35 (b) "Business" means any sole proprietorship,
36 partnership, joint venture, corporation or other legal entity
37 formed for profit-making purposes, including retail establishments
38 where goods or services are sold as well as professional
39 corporations and other entities where legal, medical, dental,
40 engineering, architectural or other professional services are
41 delivered.

42 (c) "Employee" means any person who is employed by any
43 employer in the consideration for direct or indirect monetary
44 wages or profit and any person who volunteers his or her services.

45 (d) "Employer" means any person, partnership,
46 corporation, including a municipal corporation, or nonprofit
47 entity, that employs the services of one or more individual
48 persons.

49 (e) "Enclosed area" means all space between a floor and
50 ceiling that is enclosed on all sides by solid walls or windows,
51 excluding doors or passageways, that extend from the floor to the
52 ceiling, including all space therein screened by partitions that
53 do not extend to the ceiling or are not solid, office landscaping
54 or similar structures.

55 (f) "Place of employment" means any enclosed area under
56 the control of a public or private employer that employees
57 normally frequent during the course of employment, including, but
58 not limited to, work areas, employee lounges and restrooms,
59 conference and classrooms, employee cafeterias and hallways. A
60 private residence is not a "place of employment" unless it is used
61 as a child care facility, as defined in Section 43-20-5, adult day
62 care or health care facility that is licensed or regulated by the
63 State Department of Health.

64 (g) "Public conveyance" means buses, taxis, trains,
65 trolleys, boats and other means of public transit when used for
66 public conveyance.

67 (h) "Public meeting" means all meetings open to the
68 public unless held in a private residence.

69 (i) "Public place" means any enclosed area to which the
70 public is invited or in which the public is permitted, including,
71 but not limited to, banks, educational facilities, health
72 facilities, laundromats, public transportation facilities,
73 reception areas, restaurants, retail food production and marketing
74 establishments, retail service establishments, retail stores,
75 theaters and waiting rooms. A private residence is not a "public
76 place."

77 (j) "Restaurant" means any coffee shop, cafeteria,
78 sandwich stand, or any other eating establishment that gives or
79 offers for sale food to the public, guests or employees, as well
80 as kitchens in which food is prepared on the premises for serving
81 elsewhere, including catering facilities, except that the term
82 "restaurant" does not include a cocktail lounge or tavern if the
83 cocktail lounge or tavern is a "bar" as defined in paragraph (a)
84 of this section.

85 (k) "Retail tobacco store" means a retail store
86 utilized primarily for the on-site sale of tobacco products and
87 accessories, including the rental of on-site humidors and in which
88 the sale of other products is merely incidental.

89 (l) "Service line" means any indoor line at which one
90 or more persons are waiting for or receiving service of any kind,
91 whether or not the service involves the exchange of money.

92 (m) "Smoking" means inhaling, exhaling, burning,
93 carrying or otherwise possessing any lighted cigarette, cigar,
94 pipe or any other object or device of any form that contains
95 lighted tobacco or any other smoking product.

96 (n) "Sports arena" means sports pavilions, gymnasiums,
97 health spas, boxing arenas, swimming pools, roller and ice rinks,
98 bowling alleys and other similar places where members of the
99 general public assemble either to engage in or witness physical

100 exercise, athletic competition or other sports entertainment
101 events.

102 **SECTION 3.** (The following provision shall be applicable in
103 the following six (6) Mississippi counties: Harrison, Hancock,
104 Jackson, Pearl River, Stone and George)

105 (1) Smoking is prohibited in all enclosed public places in
106 the State of Mississippi, including, but not limited to, the
107 following places:

108 (a) Elevators;

109 (b) Restrooms, lobbies, reception areas, hallways and
110 any other common-use areas;

111 (c) Buses, taxicabs and other means of public
112 conveyance;

113 (d) Service lines;

114 (e) Retail stores;

115 (f) All areas available to and customarily used by the
116 general public in all businesses and nonprofit entities patronized
117 by the public, including, but not limited to, banks, laundromats,
118 hotels and motels;

119 (g) Restaurants;

120 (h) Public areas of aquariums, galleries, libraries and
121 museums when open to the public;

122 (i) Any facility that is primarily used for exhibiting
123 any motion picture, stage, drama, lecture, musical recital or
124 other similar performance;

125 (j) Sports arenas and convention centers;

126 (k) Waiting rooms, hallways, wards and semiprivate
127 rooms of health facilities, including, but not limited to,
128 hospitals, clinics, physical therapy facilities, doctors' offices,
129 dentists' offices, personal care homes, hospices and birthing
130 facilities;

131 (l) Indoor lobbies, hallways and other common areas in
132 apartment buildings, condominiums, trailer parks, retirement

133 facilities, nursing homes and other multiple-unit residential
134 facilities;

135 (m) Polling places during the days and hours of
136 operation.

137 (2) Notwithstanding any other provision of this section to
138 the contrary, any owner, operator, manager or other person who
139 controls any establishment or facility may declare that entire
140 establishment or facility is a nonsmoking establishment.

141 **SECTION 4.** (The following provision shall be applicable in
142 the following six (6) Mississippi counties: Harrison, Hancock,
143 Jackson, Pearl River, Stone and George)

144 (1) Each employer with five (5) or more employees shall
145 prohibit smoking in any place of employment under said employer's
146 control, except that an employer may designate one or more smoking
147 break rooms pursuant to this section. It is the responsibility of
148 employers with five (5) or more full-time employees to provide a
149 smoke-free place of employment for all employees.

150 (2) Not later than six (6) months after the effective date
151 of this act, each employer having an enclosed place of employment
152 shall adopt, implement, make known and maintain a written smoking
153 policy that contains the following requirements: Smoking is
154 prohibited in all enclosed facilities within a place of employment
155 without exception. This includes common work areas, auditoriums,
156 classrooms, conference and meeting rooms, private offices,
157 elevators, hallways, medical facilities, cafeterias, employee
158 lounges, stairs, restrooms, vehicles and all other enclosed
159 facilities.

160 (3) Each smoking room designated by an employer pursuant to
161 this section shall meet the following requirements: (a) air from
162 the smoking room shall be exhausted directly to the outside by an
163 exhaust fan, and no air from such room shall be recirculated to
164 other parts of the building; (b) the employer shall comply with
165 any ventilation standard adopted by (i) the United States

166 Secretary of Labor under the authority of the Occupational Safety
167 and Health Act of 1970, as from time to time amended, or (ii) the
168 federal Environmental Protection Agency; (c) such room shall be
169 located in a nonwork area, where no employee, as part of his or
170 her work responsibilities, is required to enter, such work
171 responsibilities shall not include any custodial or maintenance
172 work carried out in the smoking room when it is unoccupied; and
173 (d) such room shall be for the use of employees only.

174 (4) Each employer that provides a smoking room pursuant to
175 this section shall provide sufficient smoking break rooms for
176 nonsmoking employees.

177 (5) Nothing in this section may be construed to prohibit an
178 employer from designating an entire business facility as a
179 nonsmoking area.

180 (6) The State Department of Health may exempt any employer
181 from the provisions of this section if he finds that (a) the
182 employer made a good faith effort to comply with the provisions of
183 this section, and (b) any further requirement to so comply would
184 constitute an unreasonable financial burden on the employer.

185 **SECTION 5.** (The following provision shall be applicable in
186 the following six (6) Mississippi counties: Harrison, Hancock,
187 Jackson, Pearl River, Stone and George)

188 Smoking shall not occur within ten (10) feet of any entrance
189 to a building or passageway outside any enclosed area.

190 **SECTION 6.** The following provision shall be applicable in
191 the following six (6) Mississippi counties: Harrison, Hancock,
192 Jackson, Pearl River, Stone and George:

193 (1) Notwithstanding any other provision of this act to the
194 contrary, the following areas shall not be subject to the smoking
195 restrictions of this act:

196 (a) Bars;

197 (b) Private residences, except when used as a licensed
198 child care facility;

199 (c) Hotel and motel rooms;

200 (d) Retail tobacco stores;

201 (e) Restaurants, hotel and motel conference or meeting
202 rooms, and public and private assembly rooms while these places
203 are being used for private functions;

204 (f) Any facility operated by an entity licensed by the
205 Mississippi Gaming Commission, except for restaurants located in
206 such facilities which shall be subject to the smoking restrictions
207 of this act; and

208 (g) All public schools and campuses within the State of
209 Mississippi regulated under Section 97-32-25 et seq.

210 (2) Notwithstanding any other provision of this section to
211 the contrary, any owner, operator, manager or other person who
212 controls any establishment described in this section may declare
213 that entire establishment is a nonsmoking establishment.

214 **SECTION 7.** (The following provision shall be applicable in
215 the following six (6) Mississippi counties: Harrison, Hancock,
216 Jackson, Pearl River, Stone and George)

217 (1) Every public place where smoking is prohibited by this
218 act shall have posted at every entrance a conspicuous sign clearly
219 stating that smoking is prohibited.

220 (2) All ashtrays and other smoking paraphernalia shall be
221 removed from any area where smoking is prohibited by this act by
222 the owner, operator, manager or other person having control of
223 that area.

224 **SECTION 8.** (The following provision shall be applicable in
225 the following six (6) Mississippi counties: Harrison, Hancock,
226 Jackson, Pearl River, Stone and George)

227 The State Board of Health shall adopt and promulgate
228 regulations and penalties regarding the violations of this act not
229 later than ninety (90) days after the effective date of this act.

230 **SECTION 9.** (The following provision shall be applicable in
231 the following six (6) Mississippi counties: Harrison, Hancock,
232 Jackson, Pearl River, Stone and George)

233 A person or employer shall not discharge, refuse to hire or
234 in any manner retaliate against any employee, applicant for
235 employment or customer because the employee, applicant or customer
236 exercises any right to a smoke-free environment afforded by this
237 act.

238 **SECTION 10.** (The following provision shall be applicable in
239 the following six (6) Mississippi counties: Harrison, Hancock,
240 Jackson, Pearl River, Stone and George)

241 This act shall not be interpreted or construed to permit
242 smoking where it is otherwise restricted by other applicable laws
243 or to prohibit any municipality or county from adopting additional
244 ordinances with regard to the use of smoking in public places.

245 **SECTION 11.** This act shall not be construed as amending or
246 repealing Section 97-35-1(4).

247 **SECTION 12.** Section 29-5-161, Mississippi Code of 1972, is
248 amended as follows:

249 29-5-161. (1) As used in this section:

250 (a) "Smoke" or "smoking" means inhaling, exhaling,
251 burning, carrying or otherwise possessing any lighted cigarette,
252 cigar, pipe or any other object or device of any form that
253 contains lighted tobacco or any other smoking product.

254 (b) "Government building" means the New State Capitol
255 Building, the Woolfolk State Office Building, the Carroll Gartin
256 Justice Building, the Walter Sillers Office Building, the Heber
257 Ladner Building, the Department of Transportation Building, the
258 Robert E. Lee Office Building, the Robert G. Clark, Jr., Building,
259 the State Board of Health Building, the Public Employees'
260 Retirement System Building, the Central High Building, the Court
261 of Appeals Building, the War Veterans' Memorial Building, the
262 State Archives Building, the Ike Sanford Veterans Affairs

263 Building, the Old State Capitol Building, the Burroughs Building,
264 the Mayfair Building, 101 Capitol Centre and any other facility in
265 the state that is owned or leased by the State of Mississippi or
266 any agency, department or institution of the state and that is
267 used for housing state employees during the time of performance of
268 their regular duties for the state; any building (located in any
269 of the following six (6) Mississippi counties: Harrison, Jackson,
270 Hancock, Pearl River, Stone and George) owned, rented, leased,
271 occupied or operated by the state, including the legislative,
272 executive and judicial branches of state government; any county,
273 municipality or any other political subdivision of the state; any
274 public authority, commission, agency or public benefit
275 corporation; or any other separate corporate instrumentality or
276 unit of state or local government. If only part of a facility is
277 leased by the state or an agency, department or institution of the
278 state, or any county, municipality or other political subdivision
279 of the state, only the leased part of the facility will be
280 considered to be a government building for the purposes of this
281 definition.

282 * * *

283 (2) No person shall smoke in any government building * * *.

284 * * *

285 (3) The person, agency or entity having jurisdiction or
286 supervision over a government building shall not allow smoking in
287 the government building, * * * and shall use reasonable efforts to
288 prevent smoking in the government building, * * * including, but
289 not limited to, the following:

290 (a) Posting appropriate signs informing public
291 employees, invitees, guests and other persons that smoking is
292 prohibited in the government building * * *.

293 (b) Securing the removal of persons who smoke in the
294 government building * * *.

295 (4) This section expressly preempts to the state the
296 regulation of smoking in government buildings and supersedes any
297 municipal or county ordinance on the subject.

298 **SECTION 13.** Section 97-32-27, Mississippi Code of 1972, is
299 amended as follows:

300 97-32-27. (1) "Adult" means any natural person at least
301 eighteen (18) years old.

302 (2) "Minor" means any natural person under the age of
303 eighteen (18) years.

304 (3) "Person" means any natural person.

305 (4) "Tobacco product" means any substance that contains
306 tobacco including, but not limited to, cigarettes, cigars, pipes,
307 snuff, smoking tobacco or smokeless tobacco.

308 (5) "Educational property" means any public or private
309 school building or bus, public school campus, grounds,
310 recreational area, athletic field or other property owned, used or
311 operated by any local school board, school or directors for the
312 administration of any public or private educational institution or
313 during a school-related activity; provided, however, that the term
314 "educational property" shall not include any sixteenth section
315 school land or lieu land on which is not located a public school
316 building, public school campus, public school recreational area or
317 public school athletic field. Educational property shall * * *
318 include property owned or operated by the state institutions of
319 higher learning, the public community and junior colleges, or
320 vocational-technical complexes and privately-owned colleges and
321 universities. The applicability of this chapter to
322 privately-owned schools, colleges or universities shall only apply
323 in the following six (6) Mississippi counties: Harrison, Hancock,
324 Jackson, Pearl River, Stone and George.

325 **SECTION 14.** This act shall take effect and be in force from
326 and after July 1, 2006.