

By: Senator(s) Dawkins

To: Public Health and Welfare

SENATE BILL NO. 2691

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

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

19 **SECTION 1.** This act shall be known and may be cited as the
 20 "Mississippi Smoke Free Families Act."

21 **SECTION 2.** The following words and phrases shall have the
 22 meanings ascribed in this section, unless the context clearly
 23 indicates otherwise:

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

31 (b) "Business" means any sole proprietorship,
 32 partnership, joint venture, corporation or other legal entity
 33 formed for profit-making purposes, including retail establishments
 34 where goods or services are sold as well as professional

35 corporations and other entities where legal, medical, dental,
36 engineering, architectural or other professional services are
37 delivered.

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

41 (d) "Employer" means any person, partnership,
42 corporation, including a municipal corporation, or nonprofit
43 entity, that employs the services of one or more individual
44 persons.

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

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

60 (g) "Public conveyance" means buses, taxis, trains,
61 trolleys, boats and other means of public transit when used for
62 public conveyance.

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

65 (i) "Public place" means any enclosed area to which the
66 public is invited or in which the public is permitted, including,
67 but not limited to, banks, educational facilities, health

68 facilities, laundromats, public transportation facilities,
69 reception areas, restaurants, retail food production and marketing
70 establishments, retail service establishments, retail stores,
71 theaters and waiting rooms. A private residence is not a "public
72 place."

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

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

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

88 (m) "Smoking" means inhaling, exhaling, burning,
89 carrying or otherwise possessing any lighted cigarette, cigar,
90 pipe or any other object or device of any form that contains
91 lighted tobacco or any other smoking product.

92 (n) "Sports arena" means sports pavilions, gymnasiums,
93 health spas, boxing arenas, swimming pools, roller and ice rinks,
94 bowling alleys and other similar places where members of the
95 general public assemble either to engage in or witness physical
96 exercise, athletic competition or other sports entertainment
97 events.

98 **SECTION 3.** (1) Smoking is prohibited in all enclosed public
99 places in the State of Mississippi, including, but not limited to,
100 the following places:

- 101 (a) Elevators;
- 102 (b) Restrooms, lobbies, reception areas, hallways and
103 any other common-use areas;
- 104 (c) Buses, taxicabs and other means of public
105 conveyance;
- 106 (d) Service lines;
- 107 (e) Retail stores;
- 108 (f) All areas available to and customarily used by the
109 general public in all businesses and nonprofit entities patronized
110 by the public, including, but not limited to, banks, laundromats,
111 hotels and motels;
- 112 (g) Restaurants;
- 113 (h) Public areas of aquariums, galleries, libraries and
114 museums when open to the public;
- 115 (i) Any facility that is primarily used for exhibiting
116 any motion picture, stage, drama, lecture, musical recital or
117 other similar performance;
- 118 (j) Sports arenas and convention centers;
- 119 (k) Waiting rooms, hallways, wards and semiprivate
120 rooms of health facilities, including, but not limited to,
121 hospitals, clinics, physical therapy facilities, doctors' offices,
122 dentists' offices, personal care homes, hospices and birthing
123 facilities;
- 124 (l) Indoor lobbies, hallways and other common areas in
125 apartment buildings, condominiums, trailer parks, retirement
126 facilities, nursing homes and other multiple-unit residential
127 facilities;
- 128 (m) Polling places during the days and hours of
129 operation.
- 130 (2) Notwithstanding any other provision of this section to
131 the contrary, any owner, operator, manager or other person who
132 controls any establishment or facility may declare that entire
133 establishment or facility is a nonsmoking establishment.

134 SECTION 4. (1) Each employer with five (5) or more
135 employees shall prohibit smoking in any place of employment under
136 said employer's control, except that an employer may designate one
137 or more smoking break rooms pursuant to this section. It is the
138 responsibility of employers with five (5) or more full-time
139 employees to provide a smoke-free place of employment for all
140 employees.

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

151 (3) Each smoking room designated by an employer pursuant to
152 this section shall meet the following requirements: (a) air from
153 the smoking room shall be exhausted directly to the outside by an
154 exhaust fan, and no air from such room shall be recirculated to
155 other parts of the building; (b) the employer shall comply with
156 any ventilation standard adopted by (i) the United States
157 Secretary of Labor under the authority of the Occupational Safety
158 and Health Act of 1970, as from time to time amended, or (ii) the
159 federal Environmental Protection Agency; (c) such room shall be
160 located in a nonwork area, where no employee, as part of his or
161 her work responsibilities, is required to enter, such work
162 responsibilities shall not include any custodial or maintenance
163 work carried out in the smoking room when it is unoccupied; and
164 (d) such room shall be for the use of employees only.

165 (4) Each employer that provides a smoking room pursuant to
166 this section shall provide sufficient smoking break rooms for
167 nonsmoking employees.

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

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

176 **SECTION 5.** Smoking shall not occur within ten (10) feet of
177 any entrance to a building or passageway outside any enclosed
178 area.

179 **SECTION 6.** (1) Notwithstanding any other provision of this
180 act to the contrary, the following areas shall not be subject to
181 the smoking restrictions of this act:

182 (a) Bars;

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

185 (c) Hotel and motel rooms;

186 (d) Retail tobacco stores;

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

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

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

196 (2) Notwithstanding any other provision of this section to
197 the contrary, any owner, operator, manager or other person who

198 controls any establishment described in this section may declare
199 that entire establishment is a nonsmoking establishment.

200 **SECTION 7.** (1) Every public place where smoking is
201 prohibited by this act shall have posted at every entrance a
202 conspicuous sign clearly stating that smoking is prohibited.

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

207 **SECTION 8.** The State Board of Health shall adopt and
208 promulgate regulations and penalties regarding the violations of
209 this act not later than ninety (90) days after the effective date
210 of this act.

211 **SECTION 9.** A person or employer shall not discharge, refuse
212 to hire or in any manner retaliate against any employee, applicant
213 for employment or customer because the employee, applicant or
214 customer exercises any right to a smoke-free environment afforded
215 by this act.

216 **SECTION 10.** This act shall not be interpreted or construed
217 to permit smoking where it is otherwise restricted by other
218 applicable laws or to prohibit any municipality or county from
219 adopting additional ordinances with regard to the use of smoking
220 in public places.

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

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

225 29-5-161. (1) As used in this section:

226 (a) "Smoke" or "smoking" means inhaling, exhaling,
227 burning, carrying or otherwise possessing any lighted cigarette,
228 cigar, pipe or any other object or device of any form that
229 contains lighted tobacco or any other smoking product.

230 (b) "Government building" means the New State Capitol
231 Building, the Woolfolk State Office Building, the Carroll Gartin
232 Justice Building, the Walter Sillers Office Building, the Heber
233 Ladner Building, the Department of Transportation Building, the
234 Robert E. Lee Office Building, the Robert G. Clark, Jr., Building,
235 the State Board of Health Building, the Public Employees'
236 Retirement System Building, the Central High Building, the Court
237 of Appeals Building, the War Veterans' Memorial Building, the
238 State Archives Building, the Ike Sanford Veterans Affairs
239 Building, the Old State Capitol Building, the Burroughs Building,
240 the Mayfair Building, 101 Capitol Centre and any other facility in
241 the state that is owned or leased by the State of Mississippi or
242 any agency, department or institution of the state and that is
243 used for housing state employees during the time of performance of
244 their regular duties for the state; any building owned, rented,
245 leased, occupied or operated by the state, including the
246 legislative, executive and judicial branches of state government;
247 any county, municipality or any other political subdivision of the
248 state; any public authority, commission, agency or public benefit
249 corporation; or any other separate corporate instrumentality or
250 unit of state or local government. If only part of a facility is
251 leased by the state or an agency, department or institution of the
252 state, or any county, municipality or other political subdivision
253 of the state, only the leased part of the facility will be
254 considered to be a government building for the purposes of this
255 definition.

256 * * *

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

258 * * *

259 (3) The person, agency or entity having jurisdiction or
260 supervision over a government building shall not allow smoking in
261 the government building, * * * and shall use reasonable efforts to

262 prevent smoking in the government building, * * * including, but
263 not limited to, the following:

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

267 (b) Securing the removal of persons who smoke in the
268 government building * * *.

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

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

274 97-32-27. (1) "Adult" means any natural person at least
275 eighteen (18) years old.

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

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

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

282 (5) "Educational property" means any public or private
283 school building or bus, public school campus, grounds,
284 recreational area, athletic field or other property owned, used or
285 operated by any local school board, school or directors for the
286 administration of any public or private educational institution or
287 during a school-related activity; provided, however, that the term
288 "educational property" shall not include any sixteenth section
289 school land or lieu land on which is not located a public school
290 building, public school campus, public school recreational area or
291 public school athletic field. Educational property shall * * *
292 include property owned or operated by the state institutions of
293 higher learning, the public community and junior colleges, or

294 vocational-technical complexes and privately-owned colleges and
295 universities.

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