HOUSE BILL NO. 316

AN ACT TO CREATE THE MISSISSIPPI SMOKE FREE FAMILIES ACT; TO PROVIDE DEFINITIONS OF CERTAIN TERMS; TO ProHIBIT SMOKING IN ENCLOSED PUBLIC PLACES IN THE STATE OF MISSISSIPPI; TO PROVIDE THAT EMPLOYERS ARE RESPONSIBLE FOR PROVIDING A SMOKE-FREE WORKPLACE FOR ALL EMPLOYEES; TO SPECIFY THE AREAS WHERE SMOKING IS NOT REGULATED; TO PROVIDE FOR THE POSTING OF NO SMOKING SIGNS; TO DIRECT THE STATE BOARD OF HEALTH TO ADOPT REGULATIONS AND PENALTIES REGARDING VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

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

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

(b) "Business" means any sole proprietorship, partnership, joint venture, corporation or other legal entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
(c) "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services.

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

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

(f) "Government building" means any building owned, rented, leased, occupied or operated by the state, including the legislative, executive and judicial branches of state government; any county, municipality or any other political subdivision of the state; any public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

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

(h) "Public conveyance" means buses, taxis, trains, trolleys, boats and other means of public transit when used for public conveyance.
(i) "Public place" means any enclosed area to which the public is invited or in which the public is permitted including, but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."

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

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

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

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

(n) "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in or witness physical exercise, athletic competition or other sports entertainment events.
SECTION 3. All government buildings that are subject to Section 29-5-161 are exempt from this act.

SECTION 4. (1) Smoking is prohibited in all enclosed public places in the State of Mississippi including, but not limited to, the following places:

(a) Elevators;

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

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

(d) Service lines;

(e) Retail stores;

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

(g) Restaurants;

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

(i) Any facility that is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production;

(j) Sports arenas and convention centers;

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

(l) Indoor lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities; and
(m) Polling places during the days and hours of operation.

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

SECTION 5. (1) It is the responsibility of employers with three (3) or more full-time employees to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

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

SECTION 6. Smoking shall not be allowed within ten (10) feet of any entrance to a building or passageway outside any enclosed area.

SECTION 7. (1) Notwithstanding any other provision of this act to the contrary, the following areas shall not be subject to the smoking restrictions of this act:

(a) Bars;

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

(c) Hotel and motel rooms;

(d) Retail tobacco and convenience stores;
(e) Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions;

(f) Any facility licensed by the Mississippi Gaming Commission;

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

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

SECTION 8. (1) Every public place where smoking is prohibited by this act shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

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

SECTION 9. The State Board of Health shall adopt and promulgate regulations and penalties regarding the violations of this act not later than ninety (90) days after the effective date of this act.

SECTION 10. A person or employer shall not discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because the employee, applicant or customer exercises any right to smoke-free environment afforded by this act.

SECTION 11. This act shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or to prohibit any municipality or county from adopting additional ordinances with regard to the use of smoking in public places.
SECTION 12. This act shall not be construed as amending or repealing Section 97-35-1(4).

SECTION 13. This act shall take effect and be in force from and after its passage.