

By: Representative McBride

To: Public Health and Human
Services; Judiciary B

HOUSE BILL NO. 283

1 AN ACT TO CREATE THE NON-SMOKER PROTECTION ACT; TO PROVIDE
2 DEFINITIONS OF CERTAIN TERMS; TO PROHIBIT SMOKING IN ENCLOSED
3 PUBLIC PLACES IN THE STATE OF MISSISSIPPI; TO PROVIDE FOR CERTAIN
4 EXEMPTIONS FROM THIS ACT; TO REQUIRE THE PLACEMENT OF "NO SMOKING"
5 SIGNS AT THE ENTRANCES OF PLACES WHERE SMOKING IS PROHIBITED BY
6 THIS ACT; TO PROVIDE THAT THE STATE DEPARTMENT OF HEALTH SHALL
7 ENFORCE THIS ACT; TO PROVIDE FOR CIVIL PENALTIES FOR VIOLATIONS OF
8 THIS ACT; TO DIRECT THE STATE BOARD OF HEALTH TO ADOPT RULES AND
9 REGULATIONS TO EFFECTUATE THIS ACT; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** This act shall be known and may be cited as the
12 "Non-Smoker Protection Act."

13 **SECTION 2.** As used in this act, unless the context requires
14 otherwise:

15 (a) "Acceptable form of identification" means:

16 (i) A state-issued driver's license;

17 (ii) A state-issued identification card;

18 (iii) A valid passport; or

19 (iv) A valid military identification;

20 (b) "Age-restricted venue" means a legal establishment
21 that affirmatively restricts access to its buildings or facilities
22 at all times to persons who are twenty-one (21) years of age or
23 older by requiring each person who attempts to gain entry to those
24 buildings or facilities to submit for inspection an acceptable
25 form of identification for the express purpose of determining if
26 the person is twenty-one (21) years of age or older;

27 (c) "Employee" means a person who is employed by an
28 employer in consideration for direct or indirect monetary wages or
29 profit and a person who volunteers that person's services for a
30 nonprofit entity;



31 (d) "Employer" means a person, business, partnership,
32 association, corporation, including a municipal corporation,
33 educational institution, trust, or nonprofit entity that employs
34 the services of one or more individual persons;

35 (e) "Enclosed area" means all space between a floor and
36 ceiling that is enclosed on all sides by solid walls or windows,
37 exclusive of doorways, that extend from the floor to ceiling;

38 (f) "Health care facility" means an office or
39 institution providing care or treatment of diseases, whether
40 physical, mental, or emotional, or other medical, physiological,
41 or psychological conditions. This definition includes all waiting
42 rooms, hallways, private rooms, semiprivate rooms, and wards
43 within health care facilities;

44 (g) "Person" means an individual, partnership,
45 committee, association, corporation or any other organization or
46 group of persons;

47 (h) "Place of employment" means an enclosed area under
48 the control of a public or private employer that employees
49 normally frequent during the course of employment, including, but
50 not limited to, work areas, private offices, employee lounges,
51 restrooms, conference rooms, meeting rooms, classrooms, employee
52 cafeterias, hallways, and vehicles. A private residence is not a
53 "place of employment" unless it is used as a child care, adult day
54 care, or health care facility;

55 (i) "Private club" means any club or organization that
56 does not permit the general public access to its facilities or
57 activities. Access is denied to anyone who does not agree or
58 adhere to the rules of membership. In order to be considered a
59 private club or organization for purposes of this act, the club or
60 organization must adhere to all of the following criteria:

61 (i) Have a permanent mechanism to carefully screen
62 applicants for membership on subjective rather than objective
63 factors;



64 (ii) Limit access and use of facilities, services
65 and activities of the organization to members and guests of the
66 members;

67 (iii) Be controlled by its membership and operate
68 solely for the benefit and pleasure of its members; and

69 (iv) Advertise exclusively and only to its
70 members, excluding membership drives.

71 "Private club" also means any institution or organization
72 that has received a determination of exemption from the Internal
73 Revenue Service under 26 USCS Section 501(c)(19);

74 (j) "Public place" means an enclosed area to which the
75 public is invited including, but not limited to, banks,
76 educational facilities, health care facilities, hotel and motel
77 lobbies, laundromats, public transportation facilities, reception
78 areas, restaurants, retail food production and marketing
79 establishments, recreational facilities, retail service
80 establishments, retail stores, shopping malls, sports arenas,
81 theaters, places of employment and waiting rooms;

82 (k) "Restaurant" means an eating establishment,
83 including, but not limited to, coffee shops, cafeterias, sandwich
84 stands, and private and public school cafeterias, that gives or
85 offers for sale food to the public, guests, or employees, as well
86 as kitchens and catering facilities in which food is prepared on
87 the premises for serving elsewhere. The term "restaurant"
88 includes a bar area within the restaurant;

89 (l) "Retail tobacco store" means a retail store that
90 derives its largest category of sales from tobacco products and
91 accessories;

92 (m) "Service line" means an indoor line in which one or
93 more persons are waiting for or receiving service of any kind,
94 whether or not the service involves the exchange of money;



95 (n) "Shopping mall" means an enclosed public walkway or
96 hall area that serves to connect retail or professional
97 establishments;

98 (o) "Smoking" means inhaling, exhaling, burning, or
99 carrying any lighted cigar, cigarette, pipe, or other lighted
100 tobacco product in any manner or in any form; and

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

107 **SECTION 3.** (1) Smoking is prohibited in all enclosed public
108 places within the State of Mississippi including, but not limited
109 to, the following places:

110 (a) Aquariums, galleries, libraries, and museums;

111 (b) Areas available to and customarily used by the
112 general public in businesses and nonprofit entities patronized by
113 the public including, but not limited to, banks, laundromats,
114 factories, professional offices, and retail service
115 establishments;

116 (c) Child care and adult day care facilities;

117 (d) Convention facilities;

118 (e) Educational facilities, both public and private;

119 (f) Elevators;

120 (g) Health care facilities;

121 (h) Hotels and motels;

122 (i) Lobbies, hallways, and other common areas in
123 apartment buildings, condominiums, trailer parks, retirement
124 facilities, nursing homes, and other multiple-unit residential
125 facilities;

126 (j) Polling places;



127 (k) Public and private transportation facilities,
128 including trains, buses, taxicabs and airports under the authority
129 of state or local governments, and ticket, boarding, and waiting
130 areas of public transit depots;

131 (l) Restaurants;

132 (m) Restrooms, lobbies, reception areas, hallways, and
133 other common-use areas;

134 (n) Retail stores;

135 (o) Rooms, chambers, places of meeting or public
136 assembly, including school buildings, under the control of an
137 agency, board, commission, committee or council of the State of
138 Mississippi or a political subdivision of the state, to the extent
139 the place is subject to the jurisdiction of the state;

140 (p) Service lines;

141 (q) Shopping malls;

142 (r) Sports arenas, including enclosed public places in
143 outdoor arenas; and

144 (s) Theaters and other facilities primarily used for
145 exhibiting motion pictures, stage dramas, lectures, musical
146 recitals, or other similar performances.

147 (2) This prohibition on smoking shall be communicated to all
148 existing employees and to all prospective employees upon their
149 application of employment.

150 **SECTION 4.** Notwithstanding any other provision of this act
151 to the contrary, the following areas shall be exempt from the
152 provisions of this act:

153 (a) Age-restricted venues;

154 (b) Hotel and motel rooms that are rented to guests and
155 are designated as smoking rooms; however, no more than twenty-five
156 percent (25%) of rooms rented to guests in a hotel or motel may be
157 so designated. All smoking rooms on the same floor shall be
158 contiguous and smoke from these rooms shall not infiltrate into



159 areas where smoking is prohibited under the provisions of this
160 act;

161 (c) All premises of any manufacturer, importer, or
162 wholesaler of tobacco products, all premises of any tobacco leaf
163 dealer or processor, and all tobacco storage facilities;

164 (d) Nonenclosed areas of public places, including:

165 (i) Open air patios, porches or decks;

166 (ii) Any area enclosed by garage type doors on one
167 or more sides when all of those doors are completely open; and

168 (iii) Any area enclosed by tents or awnings with
169 removable sides or vents when all of those sides or vents are
170 completely removed or open.

171 Smoke from those areas shall not infiltrate into areas where
172 smoking is prohibited under the provisions of this act;

173 (e) Nursing homes and long-term care facilities
174 licensed under Section 43-11-1 et seq; however, this exemption
175 shall only apply to residents of those facilities, and resident
176 smoking practices shall be governed by the policies and procedures
177 established by those facilities. Smoke from those areas shall not
178 infiltrate into areas where smoking is prohibited under the
179 provisions of this act;

180 (f) Private businesses with three (3) or fewer
181 employees where, in the discretion of the business owner, smoking
182 may be allowed in an enclosed room not accessible to the general
183 public. Smoke from that room shall not infiltrate into areas
184 where smoking is prohibited under the provisions of this act;

185 (g) Private clubs; however, this exemption shall not
186 apply to any entity that is established solely for the purpose of
187 avoiding compliance with this act;

188 (h) Private homes, private residences and private motor
189 vehicles, unless those homes, residences and motor vehicles are
190 being used for child care or day care or unless the private



191 vehicle is being used for the public transportation of children or
192 as part of health care or day care transportation;

193 (i) Retail tobacco stores that prohibit minors on their
194 premises;

195 (j) Commercial vehicles when the vehicle is occupied
196 solely by the operator; and

197 (k) Government buildings that are subject to Section
198 29-5-161.

199 **SECTION 5.** "No Smoking" signs or the international "No
200 Smoking" symbol, consisting of a pictorial representation of a
201 burning cigarette enclosed in a red circle with a red bar across
202 it, shall be clearly and conspicuously posted at every entrance to
203 every public place and place of employment where smoking is
204 prohibited by this act by the owner, operator, manager, or other
205 person in control of that place.

206 **SECTION 6.** (1) The provisions of this act shall be enforced
207 by the State Department of Health. The Executive Director of the
208 State Department of Health may apply for injunctive relief to
209 enforce those provisions in any court of competent jurisdiction.

210 (2) Any person who desires to register a complaint under
211 this act shall initiate the complaint with the State Department of
212 Health.

213 (3) The State Department of Health shall inspect for
214 compliance with this act while an establishment is undergoing
215 otherwise mandated inspections by the department.

216 (4) An owner, manager, operator, or employee of an
217 establishment regulated by this act shall inform persons violating
218 this act of the appropriate provisions of this act.

219 **SECTION 7.** (1) A person who knowingly smokes in an area
220 where smoking is prohibited by the provisions of this act shall be
221 subject only to a civil penalty of Fifty Dollars (\$50.00).

222 (2) A person who owns, manages, operates or otherwise
223 controls any public place where smoking is prohibited under the



224 provisions of this act and who knowingly fails to comply with any
225 provision of this act shall be subject to the following:

226 (a) For a first violation in any twelve-month period, a
227 written warning from the State Department of Health;

228 (b) For a second violation in any twelve-month period,
229 a civil penalty of One Hundred Dollars (\$100.00); and

230 (c) For a third or subsequent violation in any
231 twelve-month period, a civil penalty of Five Hundred Dollars
232 (\$500.00).

233 (3) Each day on which a knowing violation of this act occurs
234 shall be considered a separate and distinct violation.

235 **SECTION 8.** (1) The State Board of Health shall adopt rules
236 and regulations to effectuate the provisions of this act.

237 (2) The State Department of Health shall engage in a
238 continuing program to explain and clarify the purposes and
239 requirements of this act to all persons affected by this act.

240 (3) The Executive Director of the State Department of Health
241 shall annually request other governmental and educational agencies
242 to establish local operating procedures in cooperation and
243 compliance with this act.

244 **SECTION 9.** (1) No provision of this act shall be construed
245 to permit smoking where it is otherwise restricted by other
246 applicable laws.

247 (2) This act shall not be construed as amending or repealing
248 Section 97-35-1(4).

249 **SECTION 10.** This act shall be liberally construed so as to
250 further its purposes.

251 **SECTION 11.** This act shall take effect and be in force from
252 and after July 1, 2008, except for Section 8, which shall take
253 effect and be in force from and after the passage of this act.

