

By: Senator(s) Nunnelee

To: Public Health and
Welfare

SENATE BILL NO. 2116

1 AN ACT ENTITLED THE "MISSISSIPPI UNIFORM SMOKE-FREE PUBLIC
2 PLACE ACT OF 2009"; TO PROHIBIT SMOKING IN PUBLIC PLACES; TO
3 PROVIDE FOR DEFINITIONS; TO PROHIBIT SMOKING IN CERTAIN PUBLIC
4 PLACES AND AREAS; TO PROHIBIT SMOKING IN ANY INDOOR OR OUTDOOR
5 PUBLIC FACILITY IN MISSISSIPPI DURING ANY TIME THAT PERSONS UNDER
6 18 YEARS OF AGE ARE ENGAGED IN AN ORGANIZED ATHLETIC EVENT IN THE
7 FACILITY; TO PROVIDE FOR EXCEPTIONS; TO PROVIDE FOR POSTING OF
8 SIGNS AND REMOVAL OF ASHTRAYS; TO PROVIDE FOR AN INFORMATIONAL
9 PROGRAM; TO PROVIDE FOR ENFORCEMENT BY THE STATE DEPARTMENT OF
10 HEALTH; TO PROVIDE THAT VIOLATIONS OF SMOKING PROHIBITION ARE
11 PUNISHABLE BY CIVIL PENALTY; TO PROVIDE THAT THIS PROHIBITION
12 SUPERCEDES LOCAL ORDINANCES; TO AMEND SECTIONS 29-5-160, 29-5-161
13 AND 29-5-163, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL
14 ENFORCEMENT AND PENALTY PROVISIONS OF THIS ACT SHALL BE APPLICABLE
15 TO THE STATUTES PROHIBITING SMOKING IN GOVERNMENT BUILDINGS, TO
16 PROVIDE THAT PROHIBITIONS ON SMOKING IN GOVERNMENT BUILDINGS ARE
17 APPLICABLE TO GOVERNMENT-OWNED VEHICLES AND TO PROVIDE THAT
18 PROHIBITIONS ON SMOKING IN UNIVERSITY OR COLLEGE BUILDINGS ARE
19 APPLICABLE TO PRIVATE UNIVERSITIES AND COLLEGES; TO AMEND SECTION
20 97-32-27, MISSISSIPPI CODE OF 1972, TO PROHIBIT SMOKING IN ALL
21 PRIVATE SCHOOL BUILDINGS AND FACILITIES; AND FOR RELATED PURPOSES.

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

23 **SECTION 1.** **Title.** This act shall be known as the
24 "Mississippi Uniform Smoke-Free Public Place Act of 2009."

25 **SECTION 2.** **Findings.** (1) Information available to the
26 Legislature based upon scientific research data has shown that
27 nonsmokers often receive damage to their health from the smoking
28 of tobacco by others.

29 (2) Direct smoking of tobacco and indirect smoking of
30 tobacco through inhaling the smoke of those who are smoking nearby
31 are major causes of preventable diseases and death.

32 (3) Secondhand smoke is a known cause of lung cancer, heart
33 disease, chronic lung ailments such as bronchitis and asthma,
34 particularly in children, and low-weight births.



35 (4) Implementing laws that prohibit tobacco usage in certain
36 public areas, buildings and facilities is an effective approach to
37 reducing secondhand smoke exposure among nonsmokers.

38 (5) It is therefore declared to be the public policy of the
39 State of Mississippi that the rights of Mississippians be
40 protected in the manner provided in this act.

41 **SECTION 3. Definitions.** The following words and phrases
42 shall have the meanings ascribed in this section, unless the
43 context clearly indicates otherwise:

44 (a) "Alcoholic beverage" means any alcoholic beverage
45 as defined in Section 67-1-5(a).

46 (b) "Bar" means a business that is devoted to the
47 serving of light wine or beer for consumption by guests on the
48 premises.

49 (c) "Business" means any sole proprietorship,
50 partnership, joint venture, corporation or other legal entity
51 formed for profit-making purposes, including retail establishments
52 where goods or services are sold as well as professional
53 corporations and other entities where legal, medical, dental,
54 engineering, architectural or other professional services are
55 delivered.

56 (d) "Employee" means any person who is employed by any
57 employer in the consideration for direct or indirect monetary
58 wages or profit and any person who volunteers his or her services.

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

63 (f) "Enclosed area" means all space between a floor and
64 ceiling that is enclosed on all sides by solid walls or windows,
65 excluding doors or passageways, that extend from the floor to the
66 ceiling, including all space therein screened by partitions that



67 do not extend to the ceiling or are not solid, office landscaping
68 or similar structures.

69 (g) "Place of employment" means an 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 that is licensed or regulated by the
77 State Department of Health.

78 (h) "Private club" means a facility owned or operated
79 by an association or corporation, which does not operate for
80 pecuniary gain or have regular employees and which only sells
81 alcoholic beverages incidental to its operation. Affairs and
82 management of the organization are conducted by a board of
83 directors, executive committee, or similar body chosen by the
84 members at an annual meeting. The organization has established
85 bylaws and/or a constitution to govern its activities. The
86 organization has been granted a Section 501 exemption from the
87 payment of federal income taxes as a club under 26 USC. Entry
88 into and use of a private club is restricted to members only.
89 When a private club is open to the public, it does not meet this
90 definition. Private club also means an organization, whether
91 incorporated or not, which is the owner, lessee, or occupant of a
92 building or portion thereof used exclusively for club purposes at
93 all times, which is operated solely for a recreational, fraternal,
94 social, patriotic, political, benevolent or athletic purposes, but
95 not for pecuniary gain.

96 (i) "Public conveyance" means buses, taxis, trains,
97 trolleys, boats and other means of public transit when used for
98 public conveyance.



99 (j) "Public place" means any enclosed area to which the
100 public is invited or in which the public is permitted, including,
101 but not limited to, banks, educational facilities, health
102 facilities, laundromats, public transportation facilities,
103 reception areas, restaurants, retail food production and marketing
104 establishments, retail service establishments, retail stores,
105 theaters and waiting rooms. A private resident is not a "public
106 place."

107 (k) "Restaurant" means a place which is regularly and
108 in a bona fide manner used and kept open for the serving of meals
109 to guests for compensation, which has suitable seating facilities
110 for guests, and which has suitable kitchen facilities connected
111 therewith for cooking an assortment of foods and meals commonly
112 ordered at various hours of the day; the service of such food as
113 sandwiches and salads only shall not be deemed in compliance with
114 this requirement. No place shall qualify as a restaurant under
115 this act unless twenty-five percent (25%) or more of the revenue
116 derived from such place shall be from the preparation, cooking and
117 serving of meals and not from the sale of beverages, or unless the
118 value of food given to and consumed by customers is equal to
119 twenty-five percent (25%) or more of total revenue. The term
120 "restaurant" does not include a "restaurant bar" as defined in
121 paragraph (l) of this section.

122 (l) "Restaurant bar" means a separate enclosed area of
123 a restaurant that serves alcoholic beverages for consumption by
124 guests of legal age to consume alcoholic beverages on the
125 premises.

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



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

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

137 (p) "Sports arena" means sports pavilions, gymnasiums,
138 health spas, boxing arenas, swimming pools, roller and ice rinks,
139 bowling alleys and other similar places where members of the
140 general public assemble either to engage in or witness physical
141 exercise, athletic competition or other sports entertainment
142 events.

143 **SECTION 4. Prohibitions on smoking.** (1) Smoking is
144 prohibited in all enclosed public places in the State of
145 Mississippi, including, but not limited to, the following places:

146 (a) Elevators;

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

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

151 (d) Service lines;

152 (e) Retail stores;

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

157 (g) Restaurants;

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

160 (i) Any facility that is primarily used for exhibiting
161 any motion picture, state, drama, lecture, musical recital or



162 other similar performance, except performers when smoking is part
163 of a stage production;

164 (j) Sports arenas and convention centers;

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

170 (l) Indoor lobbies, hallways, and other common areas in
171 apartment buildings, condominiums, trailer parks, retirement
172 facilities, nursing homes and other multiple-unit residential
173 facilities; and

174 (m) Polling places during the days and hours of
175 operation.

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

178 (3) No person shall smoke in any indoor or outdoor public
179 facility in Mississippi during any time that persons under
180 eighteen (18) years of age are engaged in an organized athletic
181 event in the facility, except as permitted under subsection (3)(c)
182 of this section. The person, agency or entity having jurisdiction
183 or supervision over a public facility shall not allow smoking in
184 the facility in violation of this section, and shall use
185 reasonable efforts to prevent such smoking in the facility,
186 including, but not limited to, the following:

187 (a) Posting appropriate signs informing persons that
188 such smoking is prohibited in the public facility.

189 (b) Securing the removal of persons who smoke in the
190 public facility in violation of this section.

191 (c) Providing a designated area separate from the
192 fields of activity, to which smoking shall be restricted.



193 If the actions of a person violate both this subsection (3)
194 and Section 97-32-29, the person shall be liable only under this
195 subsection (3) or Section 97-32-29, but not under both sections.

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

200 **SECTION 5. Exemptions.** (1) Notwithstanding any other
201 provision of this act to the contrary, the following areas shall
202 not be subject to the smoking restrictions of this act:

203 (a) Bars;

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

206 (c) Hotel and motel rooms;

207 (d) Retail tobacco and convenience stores;

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

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

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

215 (h) Cigar bars;

216 (i) Private clubs;

217 (j) Restaurant bars if secondhand smoke does not
218 infiltrate into areas where smoking is prohibited under this act;

219 (k) Outdoor areas of employment;

220 (l) All workplaces of any manufacturer, importer or
221 wholesaler of tobacco products, of any tobacco leaf dealer or
222 processor, and all tobacco storage facilities.

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



225 controls any establishment described in this section may declare
226 that the entire establishment is a nonsmoking establishment.

227 **SECTION 6. Notice of prohibition of smoking.** (1) Every
228 public place where smoking is prohibited by this act shall have
229 posted at every entrance a conspicuous sign clearly stating that
230 smoking is prohibited.

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

235 (3) An owner, manager or operator of a place where smoking
236 is restricted shall inform any person who is smoking in violation
237 of this act that smoking is not allowed and request that person
238 stop smoking immediately.

239 **SECTION 7. Rules - Promulgation and enforcement authority.**

240 (1) The State Board of Health may adopt reasonable rules and
241 regulations that it determines are necessary or useful to carry
242 out the purposes or facilitate enforcement of this act.

243 (2) The State Department of Health and its authorized agents
244 may enforce compliance with this act and any rules and regulations
245 adopted and promulgated under this act by the board.

246 (3) Under rules of the board, the department and its
247 authorized agents may enter upon and inspect the premises of any
248 public place or enclosed area within a place of employment at any
249 reasonable time and in a reasonable manner.

250 (4) An owner, manager or operator of a place where smoking
251 is prohibited that complies with the provisions set forth in this
252 section will be held harmless and may not be cited for any
253 penalties resulting from an individual's refusal to comply with
254 the provision of this act.

255 **SECTION 8. Act supercedes local ordinances.** (1) The
256 Mississippi Legislature finds and determines a single statewide
257 standard for smoking in enclosed areas that are also public places



258 to be a matter of statewide concern. It is declared that this act
259 preempts all municipal and county laws, charters, ordinances,
260 rules and regulations relating to smoking in the locations set
261 forth in Sections 4 and 5 of this act except for those
262 municipalities that have enacted laws, charters, ordinances, rules
263 and regulations relating to smoking prior to passage of this act.

264 (2) This act may not be construed to permit smoking where it
265 is otherwise restricted by other applicable laws or employer
266 policies.

267 **SECTION 9. Civil penalties.** Any person who violates this
268 act shall be subject to a civil fine and upon conviction shall be
269 liable as follows:

270 (a) For a first conviction, a warning;

271 (b) For a second conviction, a fine of Seventy-five
272 Dollars (\$75.00); and

273 (c) For all subsequent convictions, a fine not to
274 exceed One Hundred Fifty Dollars (\$150.00).

275 Anyone convicted under this section shall be recorded as
276 being fined for a civil violation of this act and not for
277 violating a criminal statute. Any such violation shall be triable
278 in any justice court or municipal court with proper jurisdiction.

279 It is the responsibility of all law enforcement officers and
280 law enforcement agencies of this state to ensure that the
281 provisions of this act are enforced.

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

287 **SECTION 11.** Section 29-5-160, Mississippi Code of 1972, is
288 amended as follows:



289 29-5-160. Sections 29-5-160 through 29-5-163 shall be known
290 and may be cited as the "Mississippi Clean * * * Air in Government
291 Buildings Act."

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

294 29-5-161. (1) As used in this section:

295 (a) "Smoke" or "smoking" means inhaling, exhaling,
296 burning, carrying or otherwise possessing any lighted cigarette,
297 cigar, pipe or any other object or device of any form that
298 contains lighted tobacco.

299 (b) "Government building" means the New State Capitol
300 Building, the Woolfolk State Office Building, the Carroll Gartin
301 Justice Building, the Walter Sillers Office Building, the Heber
302 Ladner Building, the Department of Transportation Building, the
303 Robert E. Lee Office Building, the Robert G. Clark, Jr. Building,
304 the State Board of Health Building, the Public Employees'
305 Retirement System Building, the Central High Building, the Court
306 of Appeals Building, the War Veterans' Memorial Building, the
307 State Archives Building, the Ike Sanford Veterans Affairs
308 Building, the Old State Capitol Building, the Burroughs Building,
309 the Mayfair Building, 101 Capitol Centre and any other facility in
310 the state that is owned or leased by the State of Mississippi or
311 any agency, department or institution of the state and that is
312 used for housing state employees during the time of performance of
313 their regular duties for the state; any building owned, rented,
314 leased, occupied or operated by the state, including the
315 legislative, executive and judicial branches of state government;
316 any county, municipality or any other political subdivision of the
317 state; any public authority, commission, agency or public benefit
318 corporation; or any other separate corporate instrumentality or
319 unit of state or local government. If only part of a facility is
320 leased by the state or an agency, department or institution of the
321 state, or any county, municipality or other political subdivision



322 of the state, only the leased part of the facility will be
323 considered to be a government building for the purposes of this
324 definition. The term "government building" shall not include any
325 building owned or leased by the state institutions of higher
326 learning or the public community and junior colleges or any space
327 in a government building used by law enforcement officers.

328 (c) "University or college classroom building" means
329 any building used by the state institutions of higher learning or
330 the public community and junior colleges or a privately owned
331 university or college exclusively for student instructional
332 purposes. The term includes classrooms, auditoriums, theaters,
333 laboratories, hallways and restrooms. Smoking policies applicable
334 in the private offices of faculty and staff and other "smoking
335 permitted" space may be determined by each academic and
336 administrative department.

337 (2) No person shall smoke in any government building, except
338 as follows: The State Veterans Affairs Board may designate
339 smoking areas in the state veterans homes operated by the board in
340 which smoking will be permitted.

341 (3) No person shall smoke in any university or college
342 classroom building.

343 (4) The person, agency or entity having jurisdiction or
344 supervision over a government building or university/college
345 classroom building shall not allow smoking in the government or
346 university/college classroom building, except in designated
347 smoking areas as authorized in subsection (2) of this section, and
348 shall use reasonable efforts to prevent smoking in such building,
349 including, but not limited to, the following:

350 (a) Posting appropriate signs informing employees,
351 invitees, guests and other persons that smoking is prohibited in
352 the building.

353 (b) Securing the removal of persons who smoke in the
354 building.



355 (5) The provisions of this section relating to the
356 prohibition of smoking in government buildings or university or
357 college classroom buildings shall be fully applicable in all
358 vehicles owned, leased or operated by a state agency or any other
359 entity of state, county, or municipal government or any state
360 institution of higher learning or a public community/junior
361 college.

362 (6) The State Board of Health may adopt reasonable rules and
363 regulations applicable to the prohibition of smoking in government
364 buildings or university or college classroom buildings as provided
365 in this section that it determines are necessary to carry out the
366 purposes or facilitate enforcement of this section and Senate Bill
367 No. 2116, 2009 Regular Session, relating to the prohibition of
368 smoking in public places. The State Department of Health and its
369 authorized agents may enforce compliance with this section and any
370 rules and regulations adopted and promulgated under this section
371 by the board. Under rules of the board, the department and its
372 authorized agents may enter upon and inspect the premises of any
373 government building or university or college classroom building at
374 any reasonable time and in a reasonable manner.

375 (7) A person or employer shall not discharge, refuse to hire
376 or in any manner retaliate against any employee, applicant for
377 employment or customer because the employee, applicant or customer
378 exercises any right to smoke-free environment afforded by this
379 act.

380 **SECTION 13.** Section 29-5-163, Mississippi Code of 1972, is
381 amended as follows:

382 29-5-163. Sections 29-5-160 and 29-5-161 shall not be
383 interpreted or construed to permit smoking where it is otherwise
384 restricted by other applicable laws or to prohibit any
385 municipality or county from adopting additional ordinances with
386 regard to the use of smoking in public places that are more



387 restrictive than the provisions of Section 29-5-161 and the
388 regulations promulgated thereunder.

389 **SECTION 14.** Section 97-32-27, Mississippi Code of 1972, is
390 amended as follows:

391 97-32-27. (1) "Adult" means any natural person at least
392 eighteen (18) years old.

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

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

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

399 (5) "Educational property" means any public or private
400 school building or bus, public school campus, grounds,
401 recreational area, athletic field or other property owned, used or
402 operated by any local school board, school or directors for the
403 administration of any public or private educational institution or
404 during a school-related activity; provided, however, that the term
405 "educational property" shall not include any sixteenth section
406 school land or lieu land on which is not located a public school
407 building, public school campus, public school recreational area or
408 public school athletic field. Educational property shall not
409 include property owned or operated by the state institutions of
410 higher learning, the public community and junior colleges, or
411 vocational-technical complexes and privately owned colleges and
412 universities.

413 **SECTION 15.** This act shall take effect and be in force from
414 and after July 1, 2009.

