

By: Senator(s) Nunnelee

To: Public Health and
Welfare

SENATE BILL NO. 2143

1 AN ACT ENTITLED THE "MISSISSIPPI UNIFORM SMOKE-FREE PUBLIC
2 PLACE ACT OF 2010"; 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 2010."

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.



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

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

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

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

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

(c) "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.

(d) "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.

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

(f) "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



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.



(n) "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.

(o) "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.

(p) "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 4. Prohibitions on smoking. (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, state, 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) Smoking shall not be allowed within ten (10) feet of any entrance to a building or passageway outside any enclosed area.

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

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

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

(c) Providing a designated area separate from the 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



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

SECTION 6. Notice of prohibition of smoking. (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.

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

SECTION 7. Rules - Promulgation and enforcement authority. (1) The State Board of Health may adopt reasonable rules and regulations that it determines are necessary or useful to carry out the purposes or facilitate enforcement of this act.

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

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

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

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



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

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

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

- (a) For a first conviction, a warning;
- (b) For a second conviction, a fine of Seventy-five Dollars (\$75.00); and
- (c) For all subsequent convictions, a fine not to exceed One Hundred Fifty Dollars (\$150.00).

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

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

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. Section 29-5-160, Mississippi Code of 1972, is 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



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

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

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

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

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

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

(b) Securing the removal of persons who smoke in the 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 this act,
367 relating to the prohibition of smoking in public places. The
368 State Department of Health and its authorized agents may enforce
369 compliance with this section and any rules and regulations adopted
370 and promulgated under this section by the board. Under rules of
371 the board, the department and its authorized agents may enter upon
372 and inspect the premises of any government building or university
373 or college classroom building at any reasonable time and in a
374 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, 2010.

