

By: Representative Mayo

To: Public Health and Human
Services

HOUSE BILL NO. 863

1 AN ACT TO CREATE THE MISSISSIPPI SMOKE-FREE AIR ACT OF 2011;
2 TO EXPRESS CERTAIN LEGISLATIVE FINDINGS REGARDING THE EFFECTS OF
3 SECONDHAND SMOKE AND OTHER RISKS OF SMOKING; TO DEFINE CERTAIN
4 TERMS; TO PROHIBIT SMOKING IN ENCLOSED PUBLIC PLACES AND PLACES OF
5 EMPLOYMENT, IN CERTAIN NONENCLOSED AREAS, AND IN ALL PUBLIC
6 TRANSPORTATIONS STATIONS; TO AUTHORIZE PERSONS TO VOLUNTARILY
7 DESIGNATE AREAS WITHIN THEIR CONTROL AS SMOKE-FREE PLACES; TO
8 PRESCRIBE THE MINIMUM REQUIREMENTS FOR PERSONS IN CONTROL OF AREAS
9 TO BE IN COMPLIANCE WITH THIS ACT; TO REQUIRE PERSONS IN CONTROL
10 OF AREAS TO POST "NO SMOKING" SIGNS AT ALL ENTRANCES TO AREAS
11 WHERE SMOKING IS PROHIBITED BY THIS ACT; TO AUTHORIZE THE STATE
12 BOARD OF HEALTH TO PROMULGATE RULES AND REGULATIONS SPECIFYING
13 SMOKING IN OUTDOOR COMMON AREAS OF ANY FACILITY OR ENTITY REQUIRED
14 TO BE LICENSED OR PERMITTED BY THE STATE DEPARTMENT OF HEALTH; TO
15 PROVIDE FOR CERTAIN EXEMPTIONS FROM THE PROHIBITIONS ON SMOKING IN
16 THIS ACT; TO PROVIDE FOR ENFORCEMENT OF THIS ACT BY LOCAL LAW
17 ENFORCEMENT OFFICERS AND AGENTS OF GOVERNMENTAL REGULATORY
18 AGENCIES WHEN UNDERGOING AUTHORIZED INSPECTIONS; TO AUTHORIZE
19 CERTAIN OFFICIALS AND OTHER PERSONS TO APPLY FOR INJUNCTIVE RELIEF
20 IN COURT TO ENFORCE THE PROVISIONS OF THIS ACT; TO PROVIDE
21 PENALTIES FOR VIOLATIONS OF THIS ACT; TO PRESCRIBE THE DUTIES OF
22 THE STATE DEPARTMENT OF HEALTH REGARDING THIS ACT; TO ALLOW
23 POLITICAL SUBDIVISIONS TO ADOPT LOCAL ORDINANCES RELATING TO
24 SMOKING THAT ARE MORE RESTRICTIVE THAN THIS ACT; TO REPEAL
25 SECTIONS 29-5-160 THROUGH 29-5-163, MISSISSIPPI CODE OF 1972,
26 WHICH ARE THE MISSISSIPPI CLEAN INDOOR AIR ACT; AND FOR RELATED
27 PURPOSES.

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

29 **SECTION 1.** This act shall be known as the Mississippi
30 Smoke-free Air Act of 2011.

31 **SECTION 2.** (1) The Legislature finds that:

32 (a) The 2010 United States Surgeon General's Report,
33 How Tobacco Smoke Causes Disease concluded:

34 (i) Low levels of secondhand-smoke exposure lead
35 to a rapid and sharp increase in dysfunction and inflammation of
36 the lining of the blood vessels, which are implicated in heart
37 attacks and stroke;



38 (ii) When inhaling secondhand cigarette smoke,
39 individuals breathe in more than seven thousand (7,000) chemicals,
40 hundreds of which are hazardous and known to cause cancer. These
41 chemicals are rapidly absorbed by cells in the body and produce
42 disease-causing cellular change; and

43 (iii) There is no safe level of exposure to
44 secondhand-smoke.

45 (b) The 2006 United States Surgeon General's Report,
46 The Health Consequences of Involuntary Exposure to Tobacco Smoke,
47 concluded:

48 (i) Secondhand-smoke exposure causes disease and
49 premature death in children and adults who do not smoke;

50 (ii) Children exposed to secondhand smoke are at
51 an increased risk for sudden infant death syndrome (SIDS), acute
52 respiratory problems, ear infections, and asthma attacks;

53 (iii) Exposure of adults to secondhand smoke has
54 immediate adverse effects on the cardiovascular system and causes
55 coronary heart disease and lung cancer;

56 (iv) Establishing smoke-free air workplaces fully
57 protects employees and the public from exposure to secondhand
58 smoke in those places. Separating smokers from nonsmokers,
59 cleaning the air, and ventilating buildings cannot eliminate
60 exposure to secondhand smoke;

61 (v) Evidence from peer-reviewed studies shows that
62 smoke-free policies and laws do not have an adverse economic
63 impact on the hospitality industry.

64 (c) The National Cancer Institute determined in 1999
65 that secondhand smoke is responsible for the early deaths of
66 approximately fifty-three thousand (53,000) Americans annually.

67 (d) Secondhand smoke has been designated as a "known
68 human carcinogen" (cancer-causing agent) by the United States
69 Environmental Protection Agency, National Toxicology Program and
70 the International Agency for Research on Cancer (IARC). The



71 National Institute for Occupational Safety and Health has
72 concluded that secondhand smoke is an occupational carcinogen.

73 (e) The Institute of Medicine's report, Secondhand
74 Smoke Exposure and Cardiovascular Effects: Making Sense of the
75 Evidence concludes: there is scientific consensus that there is a
76 causal relationship between secondhand-smoke exposure and
77 cardiovascular disease. The results of a number of meta-analyses
78 of the epidemiologic studies showed increases of twenty-five
79 percent (25%) to thirty percent (30%) in the risk of
80 cardiovascular disease caused by various exposures. Studies of
81 hospital admissions for acute myocardial infarction in many states
82 and municipalities have determined that communities see an
83 immediate reduction in heart attack admissions after the
84 implementation of comprehensive smoke-free laws, including
85 Starkville, Mississippi, (twenty-seven and seven-tenths percent
86 (27.7%) reduction, resulting in a cost savings of Two Hundred
87 Eighty-eight Thousand Two Hundred Seventy Dollars (\$288,270.00))
88 and Hattiesburg, Mississippi, (thirteen and four-tenths percent
89 (13.4%) reduction, resulting in a cost savings of Two Million
90 Three Hundred Sixty-seven Thousand Nine Hundred Nine Dollars
91 (\$2,367,909.00)).

92 (f) The Society of Actuaries has determined that
93 secondhand-smoke costs the United States economy roughly Ten
94 Billion Dollars (\$10,000,000,000.00) a year: Five Billion Dollars
95 (\$5,000,000,000.00) in estimated medical costs associated with
96 secondhand-smoke exposure and Four Billion Six Hundred Million
97 Dollars (\$4,600,000,000.00) in lost productivity.

98 (g) Business owners have no legal or constitutional
99 right to expose their employees to the toxic chemicals and
100 carcinogens in secondhand smoke. On the contrary, employers have
101 a common law duty to provide their workers with a workplace that
102 is not unreasonably dangerous.



103 (2) Accordingly, the Legislature declares that the intent of
104 this act is:

105 (a) To protect the public health and welfare of all
106 citizens, including workers in their places of employment, by
107 prohibiting exposure to secondhand smoke in public places and
108 places of employment; and

109 (b) To recognize that the need to breathe smoke-free
110 air shall have priority over the desire to smoke.

111 **SECTION 3.** The following words and phrases, whenever used in
112 this act, shall be construed as defined in this section:

113 (a) "Public place" means any area used by, and open to
114 the public; to which the public is invited; or in which the public
115 is permitted.

116 (b) "Business" means a sole proprietorship,
117 partnership, joint venture, corporation, or other business entity,
118 either for-profit or not-for-profit.

119 (c) "Employer" means a person, business, partnership,
120 association, and corporation, including a municipal corporation,
121 trust, or nonprofit entity that employs the services of one or
122 more individual persons.

123 (d) "Employee" means a person who is employed by an
124 employer in consideration for direct or indirect monetary wages or
125 profit, and a person who volunteers his or her services for an
126 employer.

127 (e) "Place of employment" means an area under the
128 control of a public or private employer that employees access
129 during the course of employment, including, but not limited to,
130 private offices, employee lounges, restrooms, conference rooms,
131 meeting rooms, classrooms, employee cafeterias, hallways, and
132 vehicles.

133 (f) "Enclosed area" means all space between a floor and
134 ceiling that is enclosed on at least two (2) sides by permanent or



135 temporary walls or windows (exclusive of doorways), which extend
136 from the floor to the ceiling.

137 (g) "Private club" means an organization, whether
138 incorporated or not, that is the owner, lessee or occupant of a
139 building or portion thereof used exclusively for club purposes at
140 all times, that is operated solely for a recreational, fraternal,
141 social, patriotic, political, benevolent or athletic purpose, but
142 not for pecuniary gain, and that only sells alcoholic beverages
143 incidental to its operation. The affairs and management of the
144 organization are conducted by a board of directors, executive
145 committee, or similar body chosen by the members at an annual
146 meeting. The organization has established bylaws and/or a
147 constitution to govern its activities. The organization has been
148 granted an exemption from the payment of federal income tax as an
149 exempt organization under 26 USCS Section 501. A private club is
150 a "public place" when it is being used for a function to which the
151 general public is invited.

152 (h) "Person in control" means any owner, operator,
153 manager, or other employee of a public place, business, place of
154 employment, and/or enclosed area that is considered to be serving
155 as the person in charge of the daily operations of said public
156 place, business, place of employment, and/or enclosed area.

157 (i) "Smoking" means inhaling, exhaling, burning, or
158 carrying any lighted or heated cigar, cigarette, or pipe, or any
159 lighted or heated tobacco product meant for inhalation, in any
160 manner or in any form.

161 **SECTION 4.** All facilities, including buildings and vehicles
162 owned, leased, or operated by the State of Mississippi or any
163 agency, department, institution or political subdivision of the
164 state, shall be subject to the provisions of this act.

165 **SECTION 5.** (1) Smoking shall be prohibited in the following
166 enclosed areas within the State of Mississippi:

167 (a) Public places; and



168 (b) Places of employment.

169 (2) Subject to the provisions of Section 10 of this act,
170 smoking shall be prohibited in the following nonenclosed areas:

171 (a) Within twenty (20) feet outside entrances, operable
172 windows, and ventilation systems of any enclosed public place or
173 place of employment within the State of Mississippi, so as to
174 ensure that secondhand smoke does not enter the area comprising
175 the public place or place of employment to ensure that employees
176 can work and the public can enter without undue exposure to
177 secondhand smoke.

178 (b) In public places including, but not limited to,
179 arenas, stadiums, amphitheaters, amusement parks, zoos,
180 playgrounds, recreational parks, and other similar venues when
181 open to the public, except in designated smoking areas, which may
182 be established only in perimeter areas at least twenty (20) feet
183 from any entrance, seating area, bleachers, grandstand, concession
184 stand, or areas specifically designed or landscaped for play or
185 sports activities.

186 (3) Smoking shall be prohibited in all public transportation
187 stations, platforms, and shelters operating under the authority of
188 the state or any agency, department, institution or political
189 subdivision of the state.

190 **SECTION 6.** (1) Notwithstanding any other provision of this
191 act, a person in control may designate any area under his or her
192 control that does not fall under the requirements of this act as a
193 smoke-free place.

194 (2) In addition to the prohibition in this act, smoking
195 shall be prohibited in any area designated by a person in control
196 as a smoke free place when a "No Smoking" sign or the
197 international "No Smoking" symbol (consisting of a pictorial
198 representation of a burning cigarette enclosed in a red circle
199 with a red bar across it) sign is posted under the provisions of
200 Section 8(1)(a) of this act.



201 (3) With respect to any area designated as smoke free under
202 this section, the remedies for violators as set forth in this act
203 shall be applied as if the designated area were subject to the
204 mandatory requirements of Section 5 of this act.

205 **SECTION 7.** A person in control of any area where smoking is
206 prohibited as described in Sections 5 and 6 of this act shall
207 communicate those restrictions to all employees and to those
208 affected within those areas on and after July 1, 2011.

209 **SECTION 8.** (1) This section establishes the "minimum
210 requirements" of persons in control for purposes of compliance
211 with this act.

212 (a) All persons in control shall make sure that "No
213 Smoking" signs or the international "No Smoking" symbol
214 (consisting of a pictorial representation of a burning cigarette
215 enclosed in a red circle with a red bar across it) are clearly and
216 conspicuously posted at all entrances to an area where smoking is
217 prohibited by this act, and on the exterior of every vehicle that
218 constitutes a place of employment under this act.

219 (b) All persons in control shall remove all ashtrays
220 from any area where smoking is prohibited by this act.

221 (c) All persons in control of a place where smoking is
222 prohibited by this act shall request all individuals violating
223 this act to cease smoking.

224 (2) All persons in control where smoking is prohibited by
225 this act shall refuse services or ask a violator of this act to
226 leave the premises without recourse, and shall seek assistance of
227 law enforcement for removal of noncompliant individuals.

228 (3) No person in control where smoking is prohibited by this
229 act shall be subject to any fines or civil actions if those
230 persons conform to the minimum requirements established in this
231 section.

232 **SECTION 9.** (1) The State Board of Health is authorized to
233 promulgate rules and regulations specifying smoking in outdoor



234 common areas of any health facility, business or other entity that
235 is required by law to obtain from the State Department of Health a
236 permit, certificate, or license to conduct its activities.

237 (2) The Mississippi Department of Human Services is
238 authorized to promulgate rules and regulations to limit the
239 exposure to secondhand smoke of children in Mississippi foster
240 care, while in the home of their foster care provider.

241 **SECTION 10.** Unless otherwise designated in a manner
242 described in Section 6 of this act, the following areas shall be
243 exempt from the mandatory provisions of Section 5 of this act:

244 (a) Private residences, except when the residence is
245 used in a capacity that requires licensure under the regulations
246 of the State Department of Health, or during the hours of
247 operation as a business when employees of the business who are not
248 the residents of the private residence or are not related to the
249 owner are present.

250 (b) Private clubs that have no employees, except when
251 being used as a public place, provided that smoke from those clubs
252 does not infiltrate into areas where smoking is prohibited under
253 the provisions of this act. This exemption shall not apply to any
254 organization that is established for the purpose of avoiding
255 compliance with this act.

256 (c) Areas used for smoking when that smoking is
257 associated with a religious ceremony practiced under the American
258 Indian Religious Freedom Act of 1978.

259 **SECTION 11.** (1) This act, when applicable, shall be
260 enforceable by local law enforcement officers.

261 (2) Any person who desires to register a complaint under
262 this act may initiate action with local law enforcement or through
263 the toll-free hotline established in Section 13(2) of this act.

264 (3) Any agents of the State Department of Health, the State
265 Fire Marshal's office, local fire departments, or other regulatory
266 agencies or entities recognized by the state or federal



267 government, while an establishment is undergoing otherwise
268 authorized inspections, shall inspect for compliance with this
269 act.

270 (4) Any state agency or local governmental authority having
271 jurisdiction with respect to a public place or place of employment
272 shall be authorized to promulgate rules and regulations for the
273 enforcement of the provisions of this act by the imposition of
274 fines and penalties, subject to administrative procedures
275 reasonably made available in connection with the challenge or
276 appeal of the fine or penalty.

277 (5) In addition to the remedies provided by the provisions
278 of this section, the following may apply for injunctive relief to
279 enforce the provisions of this act in any court of competent
280 jurisdiction: local health authorities; municipal mayors,
281 councils/board of aldermen, or attorneys; county attorneys, boards
282 of supervisors or sheriffs; and any persons aggrieved by the
283 failure of the owner, operator, manager or other person in control
284 of a public place or a place of employment to comply with this
285 act.

286 **SECTION 12.** (1) A person who smokes in an area where
287 smoking is prohibited by the provisions of this act is guilty of a
288 misdemeanor, punishable by a fine not exceeding Fifty Dollars
289 (\$50.00).

290 (2) Unless a person in control establishes that the minimum
291 requirements set forth in Section 8(1) were met at the time of the
292 alleged violation, a person in control of a place where smoking is
293 prohibited by this act and who fails to comply with the provisions
294 of this act is guilty of a misdemeanor, punishable by:

295 (a) A fine not exceeding One Hundred Dollars (\$100.00)
296 for a first violation.

297 (b) A fine not exceeding Two Hundred Dollars (\$200.00)
298 for a second violation within one (1) year.



299 (c) A fine not exceeding Five Hundred Dollars (\$500.00)
300 for each additional violation within one (1) year.

301 (3) In addition to the fines established by this section,
302 violation of this act by a person that owns, manages, operates, or
303 otherwise controls a public place or place of employment may
304 result in the suspension or revocation of any permit or license
305 issued to the person by the State of Mississippi for the premises
306 on which the violation occurred.

307 (4) Violation of this act is declared to be a public
308 nuisance, which may be abated by restraining order, preliminary
309 and permanent injunction, or other means provided for by law. An
310 offense constituting a willful violation of this act may be
311 prosecuted under Section 97-35-5.

312 (5) Each day on which a violation of this act occurs shall
313 be considered a separate and distinct violation.

314 **SECTION 13.** The State Department of Health shall have the
315 following duties:

316 (a) The Office of Tobacco Control of the State
317 Department of Health shall engage in a continuing program to
318 explain and clarify the purposes and requirements of this act to
319 persons affected by it, and to guide persons in control in their
320 compliance with it. The program may include publication of a
321 brochure explaining the provisions of this act.

322 (b) The Office of Tobacco Control shall maintain a
323 toll-free line for any person wishing to report a violation of
324 this act, and shall notify the proper regulatory or governing
325 agency having possible jurisdiction with respect to the violation.

326 (c) The Office of Tobacco Control shall provide free of
327 charge to a person in control, upon the request of the person of
328 control, a sign of the department's choice that conforms to the
329 requirements of this act.

330 (d) The State Department of Health shall be solely
331 responsible for the issuance of any declaratory opinion described



332 in Section 25-43-2.103 regarding interpretations of this act, and
333 shall be authorized to request the assistance of the Attorney
334 General and other state agencies in connection with the
335 preparation of a declaratory opinion.

336 **SECTION 14.** Nothing in this act shall be construed to
337 prevent a political subdivision of the state from adopting local
338 ordinances or regulations relating to smoking or other use of
339 tobacco products in public places and places of employment that
340 are more restrictive than this act, nor does this act repeal any
341 existing local ordinances or regulations that provide restrictions
342 on smoking that are equivalent to or greater than those provided
343 by this act.

344 **SECTION 15.** This act shall not be interpreted or construed
345 to permit smoking where it is otherwise restricted by other
346 applicable federal, tribal, state or local laws, or regulations or
347 other applicable rules.

348 **SECTION 16.** This act shall be liberally construed so as to
349 further its purposes.

350 **SECTION 17.** This act shall not be construed as amending or
351 repealing Sections 41-114-1, 97-32-29 or 97-35-1(4).

352 **SECTION 18.** Sections 29-5-160, 29-5-161 and 29-5-163,
353 Mississippi Code of 1972, which are the Mississippi Clean Indoor
354 Air Act, are repealed.

355 **SECTION 19.** This act shall take effect and be in force from
356 and after July 1, 2011.

