

By: Representative Zuber

To: Public Health and Human Services

HOUSE BILL NO. 1119

1 AN ACT TO PROHIBIT SMOKING IN PUBLIC PLACES AND IN PLACES OF
 2 EMPLOYMENT; TO PROVIDE DEFINITIONS; TO PROVIDE FOR VOLUNTARY
 3 DESIGNATION; TO PROVIDE MINIMUM REQUIREMENTS AND RIGHTS OF PERSONS
 4 IN CONTROL; TO AUTHORIZE THE STATE BOARD OF HEALTH TO PROMULGATE
 5 RULES AND REGULATIONS TO ENFORCE SMOKING PROHIBITIONS; TO
 6 PRESCRIBE EXEMPTIONS; TO PROVIDE FOR ENFORCEMENT OF THIS ACT; TO
 7 PRESCRIBE FINES AND PENALTIES FOR VIOLATIONS OF THIS ACT; TO
 8 PRESCRIBE THE DUTIES OF THE STATE DEPARTMENT OF HEALTH RELATIVE TO
 9 THIS ACT; TO REPEAL SECTIONS 29-5-161 AND 29-5-163, MISSISSIPPI
 10 CODE OF 1972, WHICH ARE THE MISSISSIPPI CLEAN INDOOR AIR ACT; TO
 11 PROVIDE FOR A REFERENDUM ON THE QUESTION OF THE PROHIBITION OF
 12 SMOKING IN PUBLIC PLACES AND IN PLACES OF EMPLOYMENT IN
 13 MISSISSIPPI AND TO CONDITION THE ENACTMENT OF THIS ACT ON THE
 14 RESULTS OF THAT REFERENDUM; AND FOR RELATED PURPOSES.

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

16 **SECTION 1. Findings and intent.** (1) The Legislature finds
 17 that:

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

20 (i) Low levels of secondhand smoke exposure lead
 21 to a rapid and sharp increase in dysfunction and inflammation of
 22 the lining of the blood vessels, which are implicated in heart
 23 attacks and stroke.



24 (ii) When inhaling secondhand cigarette smoke,
25 individuals breathe in more than seven thousand (7,000) chemicals,
26 hundreds of which are hazardous and known to cause cancer. These
27 chemicals are rapidly absorbed by cells in the body and produce
28 disease-causing cellular change.

29 (iii) There is no safe level of exposure to
30 secondhand smoke.

31 (b) The 2006 United States Surgeon General's Report,
32 *The Health Consequences of Involuntary Exposure to Tobacco Smoke*,
33 concluded:

34 (i) Exposure of adults to secondhand smoke has
35 immediate adverse effects on the cardiovascular system and causes
36 coronary heart disease and lung cancer;

37 (ii) Establishing smoke-free air workplaces fully
38 protects employees and the public from exposure to secondhand
39 smoke in those places. Separating smokers from nonsmokers,
40 cleaning the air, and ventilating buildings cannot eliminate
41 exposure to secondhand smoke;

42 (iii) Evidence from peer-reviewed studies shows
43 that smoke-free policies and laws do not have an adverse economic
44 impact on the hospitality industry.

45 (c) Studies of hospital admissions for acute myocardial
46 infarction in many states and municipalities have determined that
47 communities see an immediate reduction in heart attack admissions
48 after the implementation of comprehensive smoke-free laws,



49 including Starkville, Mississippi (27.7% reduction, resulting in a
50 cost savings of \$288,270.00) and Hattiesburg, Mississippi (13.4%
51 reduction, resulting in a cost savings of \$2,367,909.00).

52 (d) The Society of Actuaries has determined that
53 secondhand smoke costs the United States economy roughly Ten
54 Billion Dollars (\$10,000,000,000.00) a year: Five Billion Dollars
55 (\$5,000,000,000.00) in estimated medical costs associated with
56 secondhand smoke exposure and Four Billion Six Hundred Million
57 Dollars (\$4,600,000,000.00) in lost productivity.

58 (e) Business owners have no legal or constitutional
59 right to expose their employees to the toxic chemicals and
60 carcinogens in secondhand smoke. On the contrary, employers have
61 a common-law duty to provide their workers with a workplace that
62 is not unreasonably dangerous.

63 (2) Accordingly, the Legislature declares that the intent of
64 this act is:

65 (a) To protect the public health and welfare of all
66 citizens, including workers in their places of employment, by
67 prohibiting exposure to secondhand smoke in public places and
68 places of employment; and

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

71 **SECTION 2. Definitions.** The following words and phrases,
72 whenever used in this act, shall be construed as defined in this
73 section:



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

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

80 (c) "Employer" means a person, business, partnership,
81 association, and corporation, including a municipal corporation,
82 trust, or nonprofit entity that employs the services of one or
83 more individual persons.

84 (d) "Employee" means a person who is employed by an
85 employer in consideration for direct or indirect monetary wages or
86 profit, and a person who volunteers his or her services for an
87 employer.

88 (e) "Place of employment" means an area under the
89 control of a public or private employer that employees access
90 during the course of employment, including, but not limited to,
91 private offices, employee lounges, restrooms, conference rooms,
92 meeting rooms, classrooms, employee cafeterias, hallways, and
93 vehicles.

94 (f) "Enclosed area" means all space between a floor and
95 ceiling that is enclosed on at least two (2) sides by permanent or
96 temporary walls or windows (exclusive of doorways), which extend
97 from the floor to the ceiling.



98 (g) "Private club" means an organization, whether
99 incorporated or not, that is the owner, lessee or occupant of a
100 building or portion thereof used exclusively for club purposes at
101 all times, that is operated solely for a recreational, fraternal,
102 social, patriotic, political, benevolent or athletic purpose, but
103 not for pecuniary gain, and that only sells alcoholic beverages
104 incidental to its operation. The affairs and management of the
105 organization are conducted by a board of directors, executive
106 committee, or similar body chosen by the members at an annual
107 meeting. The organization has established bylaws and/or a
108 constitution to govern its activities. The organization has been
109 granted an exemption from the payment of federal income tax as an
110 exempt organization under 26 USCS Section 501. A private club is
111 a "public place" when it is being used for a function to which the
112 general public is invited.

113 (h) "Person in control" means any owner, operator,
114 manager, or other employee of a public place, business, place of
115 employment, and/or enclosed area that is considered to be serving
116 as the person in charge of the daily operations of the public
117 place, business, place of employment, and/or enclosed area.

118 (i) "Smoking" means inhaling, exhaling, burning, or
119 carrying any lighted or heated cigar, cigarette, or pipe, or any
120 lighted or heated tobacco product meant for inhalation, in any
121 manner or in any form.



122 **SECTION 3. State government facilities.** All facilities,
123 including buildings and vehicles owned, leased, or operated by the
124 State of Mississippi or any agency, department, institution or
125 political subdivision of the state shall be subject to the
126 provisions of this act.

127 **SECTION 4. Mandatory restrictions.** (1) Smoking shall be
128 prohibited in the following enclosed areas within the State of
129 Mississippi:

130 (a) Public places.

131 (b) Places of employment.

132 (2) Subject to the provisions of Section 9 of this act,
133 smoking shall be prohibited in the following nonenclosed areas:

134 (a) Within twenty (20) feet outside entrances, operable
135 windows, and ventilation systems of any enclosed public place or
136 place of employment within the State of Mississippi, so as to
137 ensure that secondhand smoke does not enter the area comprising
138 the public place or place of employment to ensure that employees
139 can work and the public can enter without undue exposure to
140 secondhand smoke.

141 (b) In public places including, but not limited to,
142 arenas, stadiums, amphitheaters, amusement parks, zoos,
143 playgrounds, recreational parks, and other similar venues when
144 open to the public, except in designated smoking areas, which may
145 be established only in perimeter areas at least twenty (20) feet
146 from any entrance, seating area, bleachers, grandstand, concession



147 stand, or areas specifically designed or landscaped for play or
148 sports activities.

149 (3) Smoking shall be prohibited in all public transportation
150 stations, platforms, and shelters operating under the authority of
151 the state or any agency, department, institution or political
152 subdivision of the state.

153 **SECTION 5. Voluntary designation.** (1) Notwithstanding any
154 other provision of this act, a person in control may designate any
155 area under his or her control that does not fall under the
156 requirements of this act as a smoke-free place.

157 (2) In addition to this act, smoking shall be prohibited in
158 any area designated by a person in control as a smoke-free place
159 when a "No Smoking" sign or the international "No Smoking" symbol
160 (consisting of a pictorial representation of a burning cigarette
161 enclosed in a red circle with a red bar across it) sign is posted
162 under the provisions of Section 7(1)(a) of this act.

163 (3) With respect to any area designated as smoke-free under
164 this section, the remedies for violators as set forth in this act
165 shall be applied as if such designated area were subject to the
166 mandatory requirements of this act.

167 **SECTION 6. Person in control.** A person in control of any
168 area where smoking is prohibited as described in Section 4 of this
169 act shall communicate such restrictions to all employees and to
170 those affected within those areas on and after the effective date
171 of this act.



172 **SECTION 7. Minimum requirements and rights of persons in**

173 **control.** (1) This section shall establish the "minimum
174 requirements" of persons in control for purposes of compliance
175 with this act.

176 (a) All persons in control shall make sure that "No
177 Smoking" signs or the international "No Smoking" symbol
178 (consisting of a pictorial representation of a burning cigarette
179 enclosed in a red circle with a red bar across it) shall be
180 clearly and conspicuously posted at all entrances to an area where
181 smoking is prohibited by this act, and on the exterior of every
182 vehicle that constitutes a place of employment under this act.

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

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

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

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



196 **SECTION 8. Regulatory authority.** The State Board of Health
197 shall have the authority to promulgate rules and regulations
198 specifying smoking in outdoor common areas of any health facility,
199 business or other entity which is required by law to obtain from
200 the State Department of Health a permit, certificate, or license
201 to conduct its activities.

202 The Department of Human Services shall have the authority to
203 promulgate rules and regulations to limit the exposure to
204 secondhand smoke of children in Mississippi foster care, while in
205 the home of their foster care provider.

206 **SECTION 9. Exemptions.** Unless otherwise designated in a
207 manner described in Section 5 of this act, the following areas
208 shall be exempt from the mandatory provisions of Section 4 of this
209 act:

210 (a) Private residences except when the residence is
211 used in a capacity that requires licensure under the regulations
212 of the State Department of Health, or during the hours of
213 operation as a business when employees of the business who are not
214 the residents of the private residence or are not related to the
215 owner are present.

216 (b) Private clubs that have no employees, except when
217 being used as a public place, provided that smoke from those clubs
218 does not infiltrate into areas where smoking is prohibited under
219 the provisions of this act. This exemption shall not apply to any



220 organization that is established for the purpose of avoiding
221 compliance with this act.

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

225 **SECTION 10. Enforcement.** (1) This act, when applicable,
226 shall be enforceable by local law enforcement.

227 (2) Any person who desires to register a complaint under
228 this act may initiate action with local law enforcement or through
229 the toll free hotline established in Section 12(b) of this act.

230 (3) Any agents of the State Department of Health, the State
231 Fire Marshal's Office, local fire departments, or other regulatory
232 agencies or entities recognized by the state or federal
233 government, while an establishment is undergoing otherwise
234 authorized inspections, shall inspect for compliance with this
235 act.

236 (4) Any state agency or local governmental authority having
237 jurisdiction with respect to the public place or place of
238 employment shall be authorized to promulgate rules and regulations
239 for the enforcement of the provisions of this act by the
240 imposition of fines and penalties, subject to administrative
241 procedures reasonably made available in connection with the
242 challenge or appeal of the fine or penalty.

243 (5) In addition to the remedies provided by the provisions
244 of this section, the following may apply for injunctive relief to



245 enforce the provisions of this act in any court of competent
246 jurisdiction: local health authorities; municipal mayors,
247 councils/board of aldermen, or attorneys; county attorneys, board
248 of supervisors or sheriffs; and any persons aggrieved by the
249 failure of the owner, operator, manager or other person in control
250 of a public place or a place of employment to comply with this
251 act.

252 **SECTION 11. Fines and penalties.** (1) A person who smokes
253 in an area where smoking is prohibited by the provisions of this
254 act shall be guilty of a misdemeanor, punishable by a fine not
255 exceeding Fifty Dollars (\$50.00).

256 (2) Unless a person in control establishes that the minimum
257 requirements set forth in Section 7(1) of this act were met at the
258 time of the alleged violation, a person in control of a place
259 where smoking is prohibited by this act and who fails to comply
260 with the provisions of this act shall be guilty of a misdemeanor,
261 punishable by:

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

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

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

268 (3) In addition to the fines established by this section,
269 violation of this act by a person that owns, manages, operates, or



270 otherwise controls a public place or place of employment may
271 result in the suspension or revocation of any permit or license
272 issued to the person by the State of Mississippi for the premises
273 on which the violation occurred.

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

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

281 **SECTION 12. Duties of the State Department of Health.** The
282 State Department of Health shall have the following duties:

283 (a) The Office of Tobacco Control of the State
284 Department of Health shall engage in a continuing program to
285 explain and clarify the purposes and requirements of this act to
286 persons affected by it, and to guide persons in control in their
287 compliance with it. The program may include publication of a
288 brochure explaining the provisions of this act.

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

293 (c) The Office of Tobacco Control shall provide free of
294 charge to a person in control, upon the request of the person of



295 control, a sign of the department's choice that conforms to the
296 requirements of this act.

297 (d) The State Department of Health shall be solely
298 responsible for the issuance of any declaratory opinion described
299 in Section 25-43-2.103, and shall be authorized to request the
300 assistance of the Attorney General and other state agencies in
301 connection with the preparation of a declaratory opinion.

302 **SECTION 13.** Nothing in this act shall be construed to
303 prevent a political subdivision of the state from adopting local
304 ordinances or regulations relating to smoking or other use of
305 tobacco products in public places and places of employment that
306 are more restrictive than this act, nor does this act repeal any
307 existing local ordinances or regulations that provide restrictions
308 on smoking that are equivalent to or greater than those provided
309 by this act.

310 **SECTION 14.** This act shall not be interpreted or construed
311 to permit smoking where it is otherwise restricted by other
312 applicable federal, tribal, state or local laws, or regulations or
313 other applicable rules.

314 **SECTION 15.** This act shall be liberally construed so as to
315 further its purposes.

316 **SECTION 16.** This act shall not be construed as amending or
317 repealing Section 97-35-1(4) or Section 97-32-29.



318 **SECTION 17.** Sections 29-5-161 and 29-5-163, Mississippi Code
319 of 1972, which are the Mississippi Clean Indoor Air Act, are
320 repealed.

321 **SECTION 18.** (1) There shall be a statewide special election
322 for the purpose of conducting a referendum on the question of
323 directing the Legislature to enact a statewide prohibition of
324 smoking in public places and in places of employment in the State
325 of Mississippi, to be held on the first Tuesday after the first
326 Monday in November 2014, and conducted in the same manner as
327 regular general elections are held. The question put before the
328 voters at the statewide special election shall read on the ballots
329 as follows:

330 "SHOULD THE MISSISSIPPI LEGISLATURE BE DIRECTED TO ENACT A
331 STATEWIDE PROHIBITION OF SMOKING IN PUBLIC PLACES AND IN PLACES OF
332 EMPLOYMENT?

333 _____ YES

334 _____ NO"

335 The qualified electors may indicate their preference on the
336 line following the proposition. The preference of a majority of
337 the qualified electors voting in the election shall determine the
338 force and effect of the following entitled act of the 2013 Regular
339 Session of the Mississippi Legislature:

340 AN ACT TO PROHIBIT SMOKING IN PUBLIC PLACES AND IN PLACES OF
341 EMPLOYMENT; TO PROVIDE DEFINITIONS; TO PROVIDE FOR VOLUNTARY
342 DESIGNATION; TO PROVIDE MINIMUM REQUIREMENTS AND RIGHTS OF PERSONS



343 IN CONTROL; TO AUTHORIZE THE STATE BOARD OF HEALTH TO PROMULGATE
344 RULES AND REGULATIONS TO ENFORCE SMOKING PROHIBITIONS; TO
345 PRESCRIBE EXEMPTIONS; TO PROVIDE FOR ENFORCEMENT OF THIS ACT; TO
346 PRESCRIBE FINES AND PENALTIES FOR VIOLATIONS OF THIS ACT; TO
347 PRESCRIBE THE DUTIES OF THE STATE DEPARTMENT OF HEALTH RELATIVE TO
348 THIS ACT; TO REPEAL SECTIONS 29-5-161 AND 29-5-163, MISSISSIPPI
349 CODE OF 1972, WHICH ARE THE MISSISSIPPI CLEAN INDOOR AIR ACT; TO
350 PROVIDE FOR A REFERENDUM ON THE QUESTION OF THE PROHIBITION OF
351 SMOKING IN PUBLIC PLACES AND IN PLACES OF EMPLOYMENT IN
352 MISSISSIPPI AND TO CONDITION THE ENACTMENT OF THIS ACT ON THE
353 RESULTS OF THE REFERENDUM; AND FOR RELATED PURPOSES.

354 A copy of the above-referenced legislation shall be kept on
355 record in the Office of the Secretary of State for public
356 inspection and shall be published on the official website of the
357 Secretary of State for the six-month period immediately before the
358 November 2014 referendum authorized in this section.

359 (2) The county election commissioners shall transmit to the
360 Secretary of State, in the same manner as the vote for state
361 officers is transmitted, a statement of the total number of votes
362 cast for or against the proposition in the statewide special
363 election. The Secretary of State shall tabulate the returns and
364 certify the results to the Governor and to each house of the
365 Legislature, and shall notify the publisher of the Mississippi
366 Code as to the force and effect of the act referenced above.



367 (3) Every individual who makes contributions to or
368 expenditures in support of or in opposition to the proposition
369 presented to the electorate in the statewide special election
370 authorized in this section, in amounts aggregating in excess of
371 Two Hundred Dollars (\$200.00), shall file all reports required to
372 be filed by political committees under Sections 23-15-801 through
373 23-15-817, in the same manner and at the same time as provided for
374 political committees.

375 **SECTION 19.** Sections 1 through 17 of this act shall take
376 effect and be in force from and after the proposition set forth in
377 the statewide special election provided in Section 18 has been
378 approved by a majority of the qualified electors voting in the
379 election vote in favor of the proposition to enact this
380 legislation. Section 18 of this act shall take effect and be in
381 force from and after its passage.

