

By: Representative Zuber

To: Public Health and Human Services

HOUSE BILL NO. 656

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, (twenty-seven and seven tenth  
50 percent (27.7%) reduction, resulting in a cost savings of Two  
51 Hundred Eighty-eight Thousand Two Hundred Seventy Dollars  
52 (\$288,270.00)) and Hattiesburg, Mississippi, (thirteen and four  
53 tenth percent (13.4%) reduction, resulting in a cost savings of  
54 Two Million Three Hundred Sixty-seven Nine Hundred Nine Dollars  
55 (\$2,367,909.00)).

56 (d) The Society of Actuaries has determined that  
57 secondhand smoke costs the United States economy roughly Ten  
58 Billion Dollars (\$10,000,000,000.00) a year: Five Billion Dollars  
59 (\$5,000,000,000.00) in estimated medical costs associated with  
60 secondhand smoke exposure and Four Billion Six Hundred Million  
61 Dollars (\$4,600,000,000.00) in lost productivity.

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

67 (2) Accordingly, the Legislature declares that the intent of  
68 this act is:

69 (a) To protect the public health and welfare of all  
70 citizens, including workers in their places of employment, by  
71 prohibiting exposure to secondhand smoke in public places and  
72 places of employment; and



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

75 **SECTION 2. Definitions.** The following words and phrases,  
76 whenever used in this act, shall be construed as defined in this  
77 section:

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

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

84 (c) "Employer" means a person, business, partnership,  
85 association, and corporation, including a municipal corporation,  
86 trust, or nonprofit entity that employs the services of one or  
87 more individual persons.

88 (d) "Employee" means a person who is employed by an  
89 employer in consideration for direct or indirect monetary wages or  
90 profit, and a person who volunteers his or her services for an  
91 employer.

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



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

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

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



122 (i) "Smoking" means inhaling, exhaling, burning, or  
123 carrying any lighted or heated cigar, cigarette, or pipe, or any  
124 lighted or heated tobacco product meant for inhalation, in any  
125 manner or in any form.

126 **SECTION 3. State government facilities.** All facilities,  
127 including buildings and vehicles owned, leased, or operated by the  
128 State of Mississippi or any agency, department, institution or  
129 political subdivision of the state are subject to the provisions  
130 of this act.

131 **SECTION 4. Mandatory restrictions.** (1) Smoking is  
132 prohibited in the following enclosed areas within the State of  
133 Mississippi:

134 (a) Public places.

135 (b) Places of employment.

136 (2) Subject to the provisions of Section 9 of this act,  
137 smoking is prohibited in the following nonenclosed areas:

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

145 (b) In public places including, but not limited to,  
146 arenas, stadiums, amphitheaters, amusement parks, zoos,



147 playgrounds, recreational parks, and other similar venues when  
148 open to the public, except in designated smoking areas, which may  
149 be established only in perimeter areas at least twenty (20) feet  
150 from any entrance, seating area, bleachers, grandstand, concession  
151 stand, or areas specifically designed or landscaped for play or  
152 sports activities.

153 (3) Smoking is prohibited in all public transportation  
154 stations, platforms, and shelters operating under the authority of  
155 the state or any agency, department, institution or political  
156 subdivision of the state.

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

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

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



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

176           **SECTION 7. Minimum requirements and rights of persons in**  
177 **control.** (1) This section establishes the "minimum requirements"  
178 for persons in control for purposes of compliance with this act.

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

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

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

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





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

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

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

209 **SECTION 9. Exemptions.** Unless otherwise designated in a  
210 manner described in Section 5 of this act, the following areas are  
211 exempt from the mandatory provisions of Section 4 of this act:

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

218 (b) Private clubs that have no employees, except when  
219 being used as a public place, provided that smoke from those clubs



220 does not infiltrate into areas where smoking is prohibited under  
221 the provisions of this act. This exemption does not apply to any  
222 organization that is established for the purpose of avoiding  
223 compliance with this act.

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

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

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

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

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



245 (5) In addition to the remedies provided by the provisions  
246 of this section, the following may apply for injunctive relief to  
247 enforce the provisions of this act in any court of competent  
248 jurisdiction: local health authorities; municipal mayors,  
249 councils/board of aldermen, or attorneys; county attorneys, board  
250 of supervisors or sheriffs; and any persons aggrieved by the  
251 failure of the owner, operator, manager or other person in control  
252 of a public place or a place of employment to comply with this  
253 act.

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

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

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

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

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



270 (3) In addition to the fines established by this section,  
271 violation of this act by a person that owns, manages, operates, or  
272 otherwise controls a public place or place of employment may  
273 result in the suspension or revocation of any permit or license  
274 issued to the person by the State of Mississippi for the premises  
275 on which the violation occurred.

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

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

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

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

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



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

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

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

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

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

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



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

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

331           "SHOULD THERE BE A STATEWIDE PROHIBITION OF SMOKING IN PUBLIC  
332 PLACES AND IN PLACES OF 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 2014 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.

