

By: Senator(s) Hopson

To: Public Health and  
Welfare; Appropriations

SENATE BILL NO. 2227

1 AN ACT ENTITLED THE "MISSISSIPPI UNIFORM SMOKE-FREE PUBLIC  
2 PLACE ACT OF 2016"; 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 SUPERSEDES 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 2016."

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 twenty (20) feet of  
177 any entrance to a building or passageway outside any enclosed  
178 area.

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

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

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

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

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

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





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

204           (a) Bars;

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

207           (c) Hotel and motel rooms;

208           (d) Retail tobacco and convenience stores;

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

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

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

216           (h) Cigar bars;

217           (i) Private clubs;

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

220           (k) Outdoor areas of employment;

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

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



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

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

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

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

240       **SECTION 7. Rules; promulgation and enforcement authority.**

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

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

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



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

256 **SECTION 8. Act supersedes local ordinances.** (1) The  
257 Mississippi Legislature finds and determines a single statewide  
258 standard for smoking in enclosed areas that are also public places  
259 to be a matter of statewide concern. It is declared that this act  
260 preempts all municipal and county laws, charters, ordinances,  
261 rules and regulations relating to smoking in the locations set  
262 forth in Sections 4 and 5 of this act except for those  
263 municipalities that have enacted laws, charters, ordinances, rules  
264 and regulations relating to smoking prior to passage of this act.

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

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

271 (a) For a first conviction, a fine of Twenty-five  
272 Dollars (\$25.00);

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



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

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

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

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

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

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

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

296 29-5-161. (1) As used in this section:

297 (a) "Smoke" or "smoking" means inhaling, exhaling,  
298 burning, carrying or otherwise possessing any lighted cigarette,



299 cigar, pipe or any other object or device of any form that  
300 contains lighted tobacco.

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



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

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

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

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

345 (4) The person, agency or entity having jurisdiction or  
346 supervision over a government building or university/college  
347 classroom building shall not allow smoking in the government or  
348 university/college classroom building, except in designated



349 smoking areas as authorized in subsection (2) of this section, and  
350 shall use reasonable efforts to prevent smoking in such building,  
351 including, but not limited to, the following:

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

355 (b) Securing the removal of persons who smoke in the  
356 building.

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

364 (6) The State Board of Health may adopt reasonable rules and  
365 regulations applicable to the prohibition of smoking in government  
366 buildings or university or college classroom buildings as provided  
367 in this section that it determines are necessary to carry out the  
368 purposes or facilitate enforcement of this section and this act  
369 relating to the prohibition of smoking in public places. The  
370 State Department of Health and its authorized agents may enforce  
371 compliance with this section and any rules and regulations adopted  
372 and promulgated under this section by the board. Under rules of  
373 the board, the department and its authorized agents may enter upon



374 and inspect the premises of any government building or university  
375 or college classroom building at any reasonable time and in a  
376 reasonable manner.

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

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

384 29-5-163. Sections 29-5-160 and 29-5-161 shall not be  
385 interpreted or construed to permit smoking where it is otherwise  
386 restricted by other applicable laws \* \* \*. It is declared that  
387 this act preempts all municipal and county laws, charters,  
388 ordinances, rules and regulations relating to smoking in the  
389 locations set forth in Sections 4 and 5 of this act except for  
390 those municipalities that have enacted laws, charters, ordinances,  
391 rules and regulations relating to smoking prior to passage of this  
392 act.

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

395 97-32-27. (1) "Adult" means any natural person at least  
396 eighteen (18) years old.

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





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

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

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

417 **SECTION 15.** This act shall take effect and be in force from  
418 and after July 1, 2016.

