

By: Senator(s) Dawkins

To: Public Health and Welfare

SENATE BILL NO. 2211

1 AN ACT TO CREATE THE MISSISSIPPI SMOKE FREE FAMILIES ACT; TO  
 2 PROVIDE DEFINITIONS OF CERTAIN TERMS; TO PROHIBIT SMOKING IN  
 3 ENCLOSED PUBLIC PLACES IN THE STATE OF MISSISSIPPI; TO PROVIDE  
 4 THAT EMPLOYERS ARE RESPONSIBLE FOR PROVIDING A SMOKE-FREE  
 5 WORKPLACE FOR ALL EMPLOYEES AND TO PRESCRIBE CERTAIN STANDARDS FOR  
 6 SMOKING BREAK ROOMS; TO SPECIFY THE AREAS WHERE SMOKING IS NOT  
 7 REGULATED; TO PROVIDE FOR THE POSTING OF NO SMOKING SIGNS; TO  
 8 DIRECT THE STATE BOARD OF HEALTH TO ADOPT REGULATIONS AND  
 9 PENALTIES REGARDING VIOLATIONS OF THIS ACT; TO AMEND SECTION  
 10 29-5-161, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THERE SHALL BE  
 11 NO DESIGNATED SMOKING AREAS IN STATE OFFICE BUILDINGS AND TO  
 12 PROVIDE THAT SMOKING PROHIBITIONS APPLY TO ANY GOVERNMENT  
 13 BUILDING; TO AMEND SECTION 97-32-27, MISSISSIPPI CODE OF 1972, TO  
 14 PROHIBIT SMOKING IN ALL PUBLIC AND PRIVATE SCHOOL BUILDINGS AND  
 15 FACILITIES, AND TO PROHIBIT SMOKING IN ALL PUBLIC AND PRIVATE  
 16 UNIVERSITY AND COLLEGE BUILDINGS AND FACILITIES IN MISSISSIPPI;  
 17 AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** This act shall be known and may be cited as the  
 20 "Mississippi Smoke Free Families Act."

21 **SECTION 2.** The following words and phrases shall have the  
 22 meanings ascribed in this section, unless the context clearly  
 23 indicates otherwise:

24 (a) "Bar" means an area that is devoted to the serving  
 25 of alcoholic beverages for consumption by guests on the premises  
 26 in which the serving of food is only incidental to the consumption  
 27 of those beverages. For the purposes of this paragraph, the term  
 28 "bar" does not include any establishment where cigarette smoke can  
 29 filter into any area where smoking is prohibited through a  
 30 passageway, ventilation system or any other means.

31 (b) "Business" means any sole proprietorship,  
 32 partnership, joint venture, corporation or other legal entity  
 33 formed for profit-making purposes, including retail establishments  
 34 where goods or services are sold as well as professional

35 corporations and other entities where legal, medical, dental,  
36 engineering, architectural or other professional services are  
37 delivered.

38 (c) "Employee" means any person who is employed by any  
39 employer in the consideration for direct or indirect monetary  
40 wages or profit and any person who volunteers his or her services.

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

45 (e) "Enclosed area" means all space between a floor and  
46 ceiling that is enclosed on all sides by solid walls or windows,  
47 excluding doors or passageways, that extend from the floor to the  
48 ceiling, including all space therein screened by partitions that  
49 do not extend to the ceiling or are not solid, office landscaping  
50 or similar structures.

51 (f) "Place of employment" means any enclosed area under  
52 the control of a public or private employer that employees  
53 normally frequent during the course of employment, including, but  
54 not limited to, work areas, employee lounges and restrooms,  
55 conference and classrooms, employee cafeterias and hallways. A  
56 private residence is not a "place of employment" unless it is used  
57 as a child care facility, as defined in Section 43-20-5, adult day  
58 care or health care facility that is licensed or regulated by the  
59 State Department of Health.

60 (g) "Public conveyance" means buses, taxis, trains,  
61 trolleys, boats and other means of public transit when used for  
62 public conveyance.

63 (h) "Public meeting" means all meetings open to the  
64 public unless held in a private residence.

65 (i) "Public place" means any enclosed area to which the  
66 public is invited or in which the public is permitted, including,  
67 but not limited to, banks, educational facilities, health

68 facilities, laundromats, public transportation facilities,  
69 reception areas, restaurants, retail food production and marketing  
70 establishments, retail service establishments, retail stores,  
71 theaters and waiting rooms. A private residence is not a "public  
72 place."

73 (j) "Restaurant" means any coffee shop, cafeteria,  
74 sandwich stand, or any other eating establishment that gives or  
75 offers for sale food to the public, guests or employees, as well  
76 as kitchens in which food is prepared on the premises for serving  
77 elsewhere, including catering facilities, except that the term  
78 "restaurant" does not include a cocktail lounge or tavern if the  
79 cocktail lounge or tavern is a "bar" as defined in paragraph (a)  
80 of this section.

81 (k) "Retail tobacco store" means a retail store  
82 utilized primarily for the on-site sale of tobacco products and  
83 accessories, including the rental of on-site humidors and in which  
84 the sale of other products is merely incidental.

85 (l) "Service line" means any indoor line at which one  
86 or more persons are waiting for or receiving service of any kind,  
87 whether or not the service involves the exchange of money.

88 (m) "Smoking" means inhaling, exhaling, burning,  
89 carrying or otherwise possessing any lighted cigarette, cigar,  
90 pipe or any other object or device of any form that contains  
91 lighted tobacco or any other smoking product.

92 (n) "Sports arena" means sports pavilions, gymnasiums,  
93 health spas, boxing arenas, swimming pools, roller and ice rinks,  
94 bowling alleys and other similar places where members of the  
95 general public assemble either to engage in or witness physical  
96 exercise, athletic competition or other sports entertainment  
97 events.

98 **SECTION 3.** (1) Smoking is prohibited in all enclosed public  
99 places in the State of Mississippi, including, but not limited to,  
100 the following places:

- 101           (a) Elevators;
- 102           (b) Restrooms, lobbies, reception areas, hallways and  
103 any other common-use areas;
- 104           (c) Buses, taxicabs and other means of public  
105 conveyance;
- 106           (d) Service lines;
- 107           (e) Retail stores;
- 108           (f) All areas available to and customarily used by the  
109 general public in all businesses and nonprofit entities patronized  
110 by the public, including, but not limited to, banks, laundromats,  
111 hotels and motels;
- 112           (g) Restaurants;
- 113           (h) Public areas of aquariums, galleries, libraries and  
114 museums when open to the public;
- 115           (i) Any facility that is primarily used for exhibiting  
116 any motion picture, stage, drama, lecture, musical recital or  
117 other similar performance;
- 118           (j) Sports arenas and convention centers;
- 119           (k) Waiting rooms, hallways, wards and semiprivate  
120 rooms of health facilities, including, but not limited to,  
121 hospitals, clinics, physical therapy facilities, doctors' offices,  
122 dentists' offices, personal care homes, hospices and birthing  
123 facilities;
- 124           (l) Indoor lobbies, hallways and other common areas in  
125 apartment buildings, condominiums, trailer parks, retirement  
126 facilities, nursing homes and other multiple-unit residential  
127 facilities;
- 128           (m) Polling places during the days and hours of  
129 operation.
- 130           (2) Notwithstanding any other provision of this section to  
131 the contrary, any owner, operator, manager or other person who  
132 controls any establishment or facility may declare that entire  
133 establishment or facility is a nonsmoking establishment.

134           SECTION 4. (1) Each employer with five (5) or more  
135 employees shall prohibit smoking in any place of employment under  
136 said employer's control, except that an employer may designate one  
137 or more smoking break rooms pursuant to this section. It is the  
138 responsibility of employers with five (5) or more full-time  
139 employees to provide a smoke-free place of employment for all  
140 employees.

141           (2) Not later than six (6) months after the effective date  
142 of this act, each employer having an enclosed place of employment  
143 shall adopt, implement, make known and maintain a written smoking  
144 policy that contains the following requirements: Smoking is  
145 prohibited in all enclosed facilities within a place of employment  
146 without exception. This includes common work areas, auditoriums,  
147 classrooms, conference and meeting rooms, private offices,  
148 elevators, hallways, medical facilities, cafeterias, employee  
149 lounges, stairs, restrooms, vehicles and all other enclosed  
150 facilities.

151           (3) Each smoking room designated by an employer pursuant to  
152 this section shall meet the following requirements: (a) air from  
153 the smoking room shall be exhausted directly to the outside by an  
154 exhaust fan, and no air from such room shall be recirculated to  
155 other parts of the building; (b) the employer shall comply with  
156 any ventilation standard adopted by (i) the United States  
157 Secretary of Labor under the authority of the Occupational Safety  
158 and Health Act of 1970, as from time to time amended, or (ii) the  
159 federal Environmental Protection Agency; (c) such room shall be  
160 located in a nonwork area, where no employee, as part of his or  
161 her work responsibilities, is required to enter, such work  
162 responsibilities shall not include any custodial or maintenance  
163 work carried out in the smoking room when it is unoccupied; and  
164 (d) such room shall be for the use of employees only.

165 (4) Each employer that provides a smoking room pursuant to  
166 this section shall provide sufficient smoking break rooms for  
167 nonsmoking employees.

168 (5) Nothing in this section may be construed to prohibit an  
169 employer from designating an entire business facility as a  
170 nonsmoking area.

171 (6) The State Department of Health may exempt any employer  
172 from the provisions of this section if he finds that (a) the  
173 employer made a good faith effort to comply with the provisions of  
174 this section, and (b) any further requirement to so comply would  
175 constitute an unreasonable financial burden on the employer.

176 **SECTION 5.** Smoking shall not occur within ten (10) feet of  
177 any entrance to a building or passageway outside any enclosed  
178 area.

179 **SECTION 6.** (1) Notwithstanding any other provision of this  
180 act to the contrary, the following areas shall not be subject to  
181 the smoking restrictions of this act:

182 (a) Bars;

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

185 (c) Hotel and motel rooms;

186 (d) Retail tobacco stores;

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

190 (f) Any facility operated by an entity licensed by the  
191 Mississippi Gaming Commission, except for restaurants located in  
192 such facilities which shall be subject to the smoking restrictions  
193 of this act; and

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

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

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

200 **SECTION 7.** (1) Every public place where smoking is  
201 prohibited by this act shall have posted at every entrance a  
202 conspicuous sign clearly stating that smoking is prohibited.

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

207 **SECTION 8.** The State Board of Health shall adopt and  
208 promulgate regulations and penalties regarding the violations of  
209 this act not later than ninety (90) days after the effective date  
210 of this act.

211 **SECTION 9.** A person or employer shall not discharge, refuse  
212 to hire or in any manner retaliate against any employee, applicant  
213 for employment or customer because the employee, applicant or  
214 customer exercises any right to a smoke-free environment afforded  
215 by this act.

216 **SECTION 10.** This act shall not be interpreted or construed  
217 to permit smoking where it is otherwise restricted by other  
218 applicable laws or to prohibit any municipality or county from  
219 adopting additional ordinances with regard to the use of smoking  
220 in public places.

221 **SECTION 11.** This act shall not be construed as amending or  
222 repealing Section 97-35-1(4).

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

225 29-5-161. (1) As used in this section:

226 (a) "Smoke" or "smoking" means inhaling, exhaling,  
227 burning, carrying or otherwise possessing any lighted cigarette,  
228 cigar, pipe or any other object or device of any form that  
229 contains lighted tobacco or any other smoking product.

230           (b) "Government building" means the New State Capitol  
231 Building, the Woolfolk State Office Building, the Carroll Gartin  
232 Justice Building, the Walter Sillers Office Building, the Heber  
233 Ladner Building, the Department of Transportation Building, the  
234 Robert E. Lee Office Building, the Robert G. Clark, Jr., Building,  
235 the State Board of Health Building, the Public Employees'  
236 Retirement System Building, the Central High Building, the Court  
237 of Appeals Building, the War Veterans' Memorial Building, the  
238 State Archives Building, the Ike Sanford Veterans Affairs  
239 Building, the Old State Capitol Building, the Burroughs Building,  
240 the Mayfair Building, 101 Capitol Centre and any other facility in  
241 the state that is owned or leased by the State of Mississippi or  
242 any agency, department or institution of the state and that is  
243 used for housing state employees during the time of performance of  
244 their regular duties for the state; any building owned, rented,  
245 leased, occupied or operated by the state, including the  
246 legislative, executive and judicial branches of state government;  
247 any county, municipality or any other political subdivision of the  
248 state; any public authority, commission, agency or public benefit  
249 corporation; or any other separate corporate instrumentality or  
250 unit of state or local government. If only part of a facility is  
251 leased by the state or an agency, department or institution of the  
252 state, or any county, municipality or other political subdivision  
253 of the state, only the leased part of the facility will be  
254 considered to be a government building for the purposes of this  
255 definition.

256       \* \* \*

257       (2) No person shall smoke in any government building \* \* \*.

258       \* \* \*

259       (3) The person, agency or entity having jurisdiction or  
260 supervision over a government building shall not allow smoking in  
261 the government building, \* \* \* and shall use reasonable efforts to



262 prevent smoking in the government building, \* \* \* including, but  
263 not limited to, the following:

264 (a) Posting appropriate signs informing public  
265 employees, invitees, guests and other persons that smoking is  
266 prohibited in the government building \* \* \*.

267 (b) Securing the removal of persons who smoke in the  
268 government building \* \* \*.

269 (4) This section expressly preempts to the state the  
270 regulation of smoking in government buildings and supersedes any  
271 municipal or county ordinance on the subject.

272 **SECTION 13.** Section 97-32-27, Mississippi Code of 1972, is  
273 amended as follows:

274 97-32-27. (1) "Adult" means any natural person at least  
275 eighteen (18) years old.

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

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

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

282 (5) "Educational property" means any public or private  
283 school building or bus, public school campus, grounds,  
284 recreational area, athletic field or other property owned, used or  
285 operated by any local school board, school or directors for the  
286 administration of any public or private educational institution or  
287 during a school-related activity; provided, however, that the term  
288 "educational property" shall not include any sixteenth section  
289 school land or lieu land on which is not located a public school  
290 building, public school campus, public school recreational area or  
291 public school athletic field. Educational property shall \* \* \*  
292 include property owned or operated by the state institutions of  
293 higher learning, the public community and junior colleges, or

294 vocational-technical complexes and privately owned colleges and  
295 universities.

296           **SECTION 14.** This act shall take effect and be in force from  
297 and after its passage.