

1 SB168
2 156567-2
3 By Senators Figures, Waggoner, Whatley, Fielding, Beasley,
4 Singleton, Irons, Smitherman, Pittman, Marsh, Sanders, Smith,
5 Brewbaker, Dial, Allen, Bussman, Coleman, Ross and Keahey
6 RFD: Health
7 First Read: 14-JAN-14

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To establish the Alabama Smoke-free Air Act of 2014;
12 to prohibit smoking in places of employment and public places;
13 to provide legislative intent; to provide definitions; to
14 prohibit smoking in certain outdoor areas; to specifically
15 exempt private clubs and private residences not used for child
16 care or adult care, or as a health care facility; to provide
17 requirements for owners, operators, managers, and employers;
18 to prohibit retaliation against any person reporting a
19 violation; to provide penalties for violations; to allow
20 political subdivisions to adopt stricter requirements; to
21 provide for the duties of the Department of Public Health and
22 the State Board of Health; to repeal the Alabama Clean Indoor
23 Air Act, Chapter 15A, consisting of Sections 22-15A-1 to
24 22-15A-10, Title 22, Code of Alabama 1975; and in connection
25 therewith to have as its purpose or effect the requirement of
26 a new or increased expenditure of local funds within the
27 meaning of Amendment 621 of the Constitution of Alabama of

1 1901, now appearing as Section 111.05 of the Official
2 Recompilation of the Constitution of Alabama of 1901, as
3 amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act shall be known and may be cited
6 as the Alabama Smoke-free Air Act of 2014.

7 Section 2. The Legislature finds and declares that
8 the purposes of this act are to protect the health and welfare
9 of the public by prohibiting smoking in public places and
10 places of employment and to recognize that the need to breathe
11 smoke free air takes priority over the desire to smoke.

12 Section 3. For the purposes of this act, the
13 following terms shall have the following meanings:

14 (1) BAR. An establishment that is primarily devoted
15 to the serving of alcoholic beverages for consumption by
16 guests on the premises and in which the serving of food is
17 only incidental to the consumption of those beverages. The
18 term includes, but is not limited to, taverns, nightclubs,
19 cocktail lounges, and cabarets.

20 (2) BUSINESS. A sole proprietorship, partnership,
21 joint venture, corporation, or other business entity, either
22 for profit or not-for-profit, including a retail
23 establishment, where goods or services are sold.

24 (3) CIGAR BAR. An establishment that is primarily
25 devoted to the on-site business of selling cigars or cigar
26 tobacco and the on-site sale or rental of humidors. The
27 establishment may be licensed to sell alcoholic beverages for

1 consumption by guests on the premises and in which the serving
2 of food is only incidental to the consumption of those
3 beverages.

4 (4) DEPARTMENT. The Alabama Department of Public
5 Health.

6 (5) E-CIGARETTE. Any electronic oral device, such as
7 one composed of a heating element, battery, or electronic
8 circuit, or any of these, which provides a vapor of nicotine
9 or any other substance, and the use or inhalation of which
10 simulates smoking. The term includes any such device, whether
11 manufactured, distributed, marketed, or sold as an
12 e-cigarette, e-cigar, e-pipe, or under any other product name
13 or description.

14 (6) EMPLOYEE. A person who performs any type of work
15 for the benefit of another in consideration of direct or
16 indirect wages or profit, or a person who volunteers his or
17 her services for a business. The term includes every person
18 described above regardless of whether such person is referred
19 to as an employee, contractor, independent contractor, or any
20 other designation or title.

21 (7) EMPLOYER. Any person, business, partnership, or
22 association with one or more employees. The term includes, but
23 is not limited to, the legislative, executive, and judicial
24 branches of state government; any county, city, town, or any
25 other political subdivision of the state; any public
26 authority, commission, agency, or public benefit corporation;

1 and any other separate corporate instrumentality or unit of
2 state or local government.

3 (8) ENCLOSED AREA. All space between a floor and
4 ceiling that is bounded on at least 50 percent of its sides by
5 walls, doorways, or windows, whether open or closed. A wall
6 includes any retractable divider, garage door, or other
7 physical barrier, whether temporary or permanent.

8 (9) HEALTH CARE FACILITY. An office or institution
9 in which care or treatment is provided for physical, mental,
10 or emotional diseases or other medical, physiological, or
11 psychological conditions.

12 (10) PLACE OF EMPLOYMENT. An area under the control
13 of a public or private employer that employees utilize during
14 the course of employment including, but not limited to, work
15 areas, employee lounges, restrooms, conference rooms, meeting
16 rooms, employee cafeterias, and hallways. A private residence
17 is a place of employment if it is a licensed child care, adult
18 day care, or health care facility.

19 (11) PLAYGROUND. Any park or recreational area
20 designated in part to be used by children that has play or
21 sports equipment installed or that has been designated or
22 landscaped for play or sports activities, or any similar
23 facility located on public or private school grounds or on
24 municipal, county, or state grounds.

25 (12) PRIVATE CLUB. An organization, whether
26 incorporated or not, which is the owner, lessee, or occupant
27 of a building or portion thereof used exclusively for club

1 purposes at all times which is operated solely for
2 recreational, fraternal, social, patriotic, political,
3 benevolent, or athletic purposes, but not for financial gain,
4 and which only sells alcoholic beverages incidental to its
5 operation. The affairs and management of the organization are
6 conducted by a board of directors, executive committee, or
7 similar body chosen by the members at an annual meeting. The
8 organization has established bylaws or a constitution, or
9 both, to govern its activities. The organization has been
10 granted an exemption from the payment of federal income tax as
11 a club under 26 U.S.C. Section 501.

12 (13) PUBLIC PLACE. A place used by or open to the
13 public including, but not limited to, any of the following:

- 14 a. A restaurant.
- 15 b. A bar.
- 16 c. A retail or service establishment.
- 17 d. An educational facility.
- 18 e. A laundromat.
- 19 f. A retail food production and marketing
20 establishment.
- 21 g. A shopping mall.
- 22 h. A convention facility.
- 23 i. A theater or other facility primarily used for
24 exhibiting a performance.
- 25 j. A sports arena.
- 26 k. A health care facility, including waiting rooms,
27 hallways, rooms, and wards.

1 l. A licensed child care or adult day care facility.

2 m. A polling place.

3 n. A room in which a public meeting is in progress.

4 o. A common area in a multiple unit residential
5 facility.

6 p. A public transportation vehicle and facility
7 including, but not limited to, a bus or taxicab, and a ticket,
8 boarding, or waiting area of a public transportation depot.

9 q. A restroom, lobby, reception area, service line,
10 hallway, elevator, or other common use area the public is
11 invited or permitted to enter.

12 r. A bingo facility or other gaming facility.

13 s. A hotel or motel, including common areas and
14 guest rooms.

15 (14) RESTAURANT. A food establishment including, but
16 not limited to, coffee shops, cafeterias, sandwich stands, and
17 private and public school cafeterias, which give or offer for
18 sale food to the public, guests, or employees, as well as
19 kitchens and catering facilities in which food is prepared on
20 the premises for services elsewhere. The term includes a bar
21 area within a restaurant.

22 (15) RETAIL OR SERVICE ESTABLISHMENT. An
23 establishment that sells goods or services to the public.

24 (16) SERVICE LINE. A line in which one or more
25 persons wait for or receive service, whether or not the
26 service involves the exchange of money. A service line

1 includes, but is not limited to, an ATM line, concert line,
2 food vendor line, movie ticket line, and sporting event line.

3 (17) SHOPPING MALL. A public walkway or hall area
4 that serves to connect retail, service, or professional
5 establishments.

6 (18) SMOKE or SMOKING. The act of inhaling,
7 exhaling, burning, carrying, holding, or possessing any
8 lighted or heated tobacco product including, but not limited
9 to, cigars, cigarettes, or pipes, or any other lighted or
10 heated smoking equipment or device containing any weed, plant,
11 or other combustible substance. The term does not include the
12 use of an e-cigarette.

13 (19) SPORTS ARENA. A place in which a person engages
14 in physical exercise, participates in athletic competition, or
15 witnesses sports or other events, including pavilions,
16 stadiums, gymnasiums, health spas, boxing arenas, swimming
17 pools, roller and ice rinks, and bowling alleys.

18 Section 4. Smoking is prohibited in all enclosed
19 areas of public places and enclosed areas of places of
20 employment.

21 Section 5. Smoking is prohibited in all of the
22 following outdoor places and areas:

23 (1) Within a distance of 15 feet of any of the
24 following parts of public places and places of employment:
25 Entrances, exits, operable windows, or ventilation intakes
26 that serve an enclosed area.

1 (2) Within 15 feet of outdoor seating and serving
2 areas of restaurants and bars.

3 (3) All outdoor arenas, sports arenas, and
4 amphitheatres and within 15 feet of bleachers and grandstands
5 for use by spectators at sporting and other public events.

6 (4) Outdoor service lines.

7 (5) In and within 15 feet of outdoor playgrounds.

8 Section 6. This act does not apply to any of the
9 following:

10 (1) A private residence, unless licensed as a child
11 care, adult care, or health care facility.

12 (2) Outdoor areas of places of employment, except as
13 provided in Section 5.

14 (3) A private club that is in existence and
15 operating on the effective date of this act.

16 (4) A tobacco manufacturer, leaf dealer, importer,
17 wholesaler, or distributor facility.

18 (5) A cigar bar.

19 (6) A retail tobacco shop or venue.

20 (7) A bar.

21 Section 7. (a) The owner, operator, manager, or
22 other person in control of a public place or place of
23 employment shall do all of the following:

24 (1) Clearly and conspicuously post in that place "No
25 Smoking" signs or the international "No Smoking" symbol, that
26 consists of a pictorial representation of a burning cigarette
27 enclosed in a red circle with a diagonal red bar.

1 (2) Clearly and conspicuously post at each entrance
2 to that place a sign stating that smoking is prohibited.

3 (3) Remove all ashtrays from any area where smoking
4 is prohibited by this act, except for ashtrays displayed for
5 sale and not for use on the premises.

6 (b) The owner, operator, manager, or other person in
7 control of a place of employment shall do all of the
8 following:

9 (1) Provide written notice that smoking is
10 prohibited in the place of employment to prospective employees
11 upon their application for employment.

12 (2) Communicate the prohibition on smoking to all
13 existing employees by the effective date of this act.

14 (3) Ensure employees comply with the requirements of
15 this act.

16 (c) The owner, manager, operator, or employee of an
17 area regulated by this act shall direct a person who is
18 smoking in violation of this act to extinguish the product
19 being smoked. If the person does not stop smoking, the owner,
20 manager, operator, or employee may refuse service and shall
21 immediately ask the person to leave the premises. If the
22 person in violation refuses to leave the premises, the owner,
23 manager, operator, or employee may immediately contact law
24 enforcement.

25 Section 8. Any other provision of this act to the
26 contrary notwithstanding, an owner, operator, manager, or
27 other person in control of an establishment, facility, or

1 outdoor area may declare the entire establishment, facility,
2 or outdoor area as nonsmoking. Smoking is prohibited in any
3 place in which a sign conforming to the requirements of
4 Section 7 is posted.

5 Section 9. (a) No person or employer shall
6 discharge, refuse to hire, or in any manner retaliate against
7 an employee, applicant for employment, or customer because
8 that employee, applicant, or customer exercises any right
9 afforded by this act or reports or attempts to report a
10 violation of this act.

11 (b) An employee working in a setting in which an
12 employer allows smoking in violation of this act does not
13 waive or surrender any legal right the employee may have
14 against the employer or any other party.

15 Section 10. (a) A person who smokes in an area where
16 smoking is prohibited by this act is guilty of a violation as
17 defined in Chapter 5, Title 13A, Code of Alabama 1975,
18 punishable by a fine not exceeding fifty dollars (\$50).

19 (b) Except as otherwise provided in this act, a
20 person who owns, manages, operates, or otherwise controls a
21 public place or place of employment and who fails to comply
22 with this act is guilty of a violation as defined in Chapter
23 5, Title 13A, Code of Alabama 1975, punishable by:

24 (1) A fine not exceeding one hundred dollars (\$100)
25 for a first violation.

1 (2) A fine not exceeding two hundred dollars (\$200)
2 for a second or subsequent violation occurring within one year
3 of the date of a previous violation.

4 (c) In addition to the criminal fines provided in
5 subsection (b), upon confirmation of a third violation and
6 each subsequent violation of this act within one year of a
7 previous violation by a person who owns, manages, operates, or
8 otherwise controls the public place or place of employment,
9 the department may assess a civil fine of up to one thousand
10 dollars (\$1,000) for the third and each subsequent violation.
11 A person may appeal the assessment of the civil fine imposed
12 for a third and each subsequent violation and a hearing shall
13 be held pursuant to the Alabama Administrative Procedure Act.

14 (d) If the civil penalty imposed pursuant to this
15 section is not paid, the department may file an action to
16 collect the civil fine in a court of competent jurisdiction in
17 the county in which the violations occurred. The person
18 committing the violations is responsible for paying all costs
19 associated with the collection of the civil fine.

20 (e) All civil fines collected pursuant to this
21 section shall be deposited to the credit of the department and
22 such funds shall be appropriated, budgeted, and allotted in
23 accordance with Sections 41-4-80 to 41-4-96, inclusive, and
24 41-19-1 to 41-19-12, inclusive, and only in amounts stipulated
25 in the general appropriations bill and other appropriation
26 bills and to be used to implement and administer this act.

1 (f) Violation of this act is a public nuisance,
2 which may be abated by the department, the Attorney General, a
3 district attorney, or the governing body of a municipality or
4 county pursuant to a restraining order, preliminary and
5 permanent injunction, or other means provided for by law. Any
6 costs associated with nuisance abatement by means of any court
7 action may be recovered by the department, Attorney General,
8 district attorney, or other agency seeking relief.

9 (g) Each day on which a violation of this act occurs
10 shall be considered a separate and distinct violation.

11 Section 11. (a) Any agency of this state and any
12 political subdivision or municipal corporation that issues a
13 license, certificate, registration, or other authority or
14 permit to a business or to an owner, operator, or other person
15 in control of a business shall provide notice of the
16 provisions of this act to each applicant for license, permit,
17 or authority.

18 (b) A citizen may file a complaint under this act
19 with the department or a county health department.

20 (c) The department, or a designee of the department,
21 or the State Fire Marshal, or his or her deputy, or any member
22 of a local fire department may enter any building or premises
23 in this state to determine compliance with this act.

24 (d) The State Board of Health may adopt rules as
25 necessary for the implementation, administration, and
26 enforcement of this act.

1 (e) Any other provision of this act to the contrary
2 notwithstanding, an employee or private citizen may bring
3 legal action to enforce this act.

4 Section 12. (a) Nothing in this act shall be
5 construed to restrict or preempt the authority of the State
6 Board of Health, any county board of health, or any county or
7 municipality from adopting and enforcing local laws,
8 ordinances, regulations, or policies that comply with at least
9 the minimum applicable standards of this act.

10 (b) Nothing in this act shall be construed to
11 restrict the power of any employer or entity from adopting and
12 enforcing standards, policies, and protocols to prohibit
13 smoking to a greater degree than this act.

14 Section 13. To the extent that the Legislature
15 appropriates funds, or to the extent that funds are provided
16 from other sources, the department shall engage in a
17 continuing program to explain and clarify the purpose and
18 requirements of this act and to guide employers, owners,
19 operators, and managers regarding compliance with this act.
20 The program may include the publication of a brochure for
21 businesses and individuals explaining the provisions of this
22 act.

23 Section 14. (a) The department may delegate to a
24 state agency or political subdivision of this state any
25 functions, powers, or duties imposed by this act.

26 (b) The department may enter into agreements with
27 third parties to determine compliance with this act.

1 Section 15. This act may not be interpreted or
2 construed to permit smoking where smoking is otherwise
3 restricted by other applicable state or local law. This act
4 shall be liberally construed to effect its purposes.

5 Section 16. All laws or parts of laws which conflict
6 with this act are repealed. Specifically, the Alabama Clean
7 Indoor Air Act, Chapter 15A, consisting of Sections 22-15A-1
8 to 22-15A-10, inclusive, of Title 22, Code of Alabama 1975, is
9 repealed.

10 Section 17. Although this bill would have as its
11 purpose or effect the requirement of a new or increased
12 expenditure of local funds, the bill is excluded from further
13 requirements and application under Amendment 621, now
14 appearing as Section 111.05 of the Official Recompilation of
15 the Constitution of Alabama of 1901, as amended, because the
16 bill defines a new crime or amends the definition of an
17 existing crime.

18 Section 18. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Health..... 14-JAN-14

Read for the second time and placed on the calen-
dar 1 amendment..... 22-JAN-14

Read for the third time and passed as amended 11-FEB-14

Yeas 21
Nays 8

Patrick Harris
Secretary