

1 SB372
2 127786-4
3 By Senators Figures, Waggoner, Beasley, Irons, Keahey,
4 Coleman, Singleton, Dunn, Smith, Fielding, Sanders, Ward,
5 Smitherman, Marsh and Ross
6 RFD: Health
7 First Read: 07-APR-11

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the Alabama Clean Indoor
9 Air Act prohibits smoking in certain public places.

10 This bill would repeal the Alabama Clean
11 Indoor Air Act and establish the Alabama Smoke-free
12 Air Act of 2011.

13 This bill would prohibit smoking in places
14 of employment, public places, and private clubs.

15 This bill would provide legislative intent
16 and definitions.

17 This bill would prohibit smoking in certain
18 outdoor areas.

19 This bill would exempt private residences
20 not used for child care or adult care, or as a
21 health care facility.

22 This bill would provide requirements for
23 owners, operators, managers, and employers.

24 This bill would prohibit retaliation against
25 any person reporting a violation.

26 This bill would provide penalties for
27 violations.

1 This bill would allow political subdivisions
2 to adopt stricter requirements.

3 This bill would provide for the
4 responsibilities of the Department of Public Health
5 and the State Board of Health.

6 Amendment 621 of the Constitution of Alabama
7 of 1901, now appearing as Section 111.05 of the
8 Official Recompilation of the Constitution of
9 Alabama of 1901, as amended, prohibits a general
10 law whose purpose or effect would be to require a
11 new or increased expenditure of local funds from
12 becoming effective with regard to a local
13 governmental entity without enactment by a 2/3 vote
14 unless: it comes within one of a number of
15 specified exceptions; it is approved by the
16 affected entity; or the Legislature appropriates
17 funds, or provides a local source of revenue, to
18 the entity for the purpose.

19 The purpose or effect of this bill would be
20 to require a new or increased expenditure of local
21 funds within the meaning of the amendment. However,
22 the bill does not require approval of a local
23 governmental entity or enactment by a 2/3 vote to
24 become effective because it comes within one of the
25 specified exceptions contained in the amendment.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 To establish the Alabama Smoke-free Air Act of 2011;
5 to prohibit smoking in places of employment, public places,
6 and private clubs; to provide legislative intent; to provide
7 definitions; to prohibit smoking in certain outdoor areas; to
8 exempt private residences not used for child care or adult
9 care, or as a health care facility; to provide requirements
10 for owners, operators, managers, and employers; to prohibit
11 retaliation against any person reporting a violation; to
12 provide penalties for violations; to allow political
13 subdivisions to adopt stricter requirements; to provide for
14 the duties of the Department of Public Health and the State
15 Board of Health; to repeal the Alabama Clean Indoor Air Act,
16 Chapter 15A, consisting of Sections 22-15A-1 to 22-15A-10,
17 Title 22, Code of Alabama 1975; and in connection therewith to
18 have as its purpose or effect the requirement of a new or
19 increased expenditure of local funds within the meaning of
20 Amendment 621 of the Constitution of Alabama of 1901, now
21 appearing as Section 111.05 of the Official Recompilation of
22 the Constitution of Alabama of 1901, as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall be known and may be cited
25 as the Alabama Smoke-free Air Act of 2011.

26 Section 2. The Legislature finds and declares that
27 the purposes of this act are to protect the health and welfare

1 of the public by prohibiting smoking in public places and
2 places of employment and to recognize that the need to breathe
3 smoke free air takes priority over the desire to smoke.

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

6 (1) BAR. An establishment that is primarily devoted
7 to the serving of alcoholic beverages for consumption by
8 guests on the premises and in which the serving of food is
9 only incidental to the consumption of those beverages. The
10 term includes, but is not limited to, taverns, nightclubs,
11 cocktail lounges, and cabarets.

12 (2) BUSINESS. Any of the following:

13 a. A sole proprietorship, partnership, joint
14 venture, corporation, or other business entity, either for
15 profit or not-for-profit, including a retail establishment,
16 where goods or services are sold.

17 b. A private club.

18 (3) DEPARTMENT. The Alabama Department of Public
19 Health.

20 (4) E-CIGARETTE. Any electronic oral device, such as
21 one composed of a heating element, battery, or electronic
22 circuit, or any of these, which provides a vapor of nicotine
23 or any other substance, and the use or inhalation of which
24 simulates smoking. The term includes any such device, whether
25 manufactured, distributed, marketed, or sold as an
26 e-cigarette, e-cigar, e-pipe, or under any other product name
27 or description.

1 (5) EMPLOYEE. A person who performs any type of work
2 for the benefit of another in consideration of direct or
3 indirect wages or profit, or a person who volunteers his or
4 her services for a business. The term includes every person
5 described above regardless of whether such person is referred
6 to as an employee, contractor, independent contractor, or any
7 other designation or title.

8 (6) EMPLOYER. Any person, business, partnership, or
9 association with one or more employees. The term includes, but
10 is not limited to, the legislative, executive, and judicial
11 branches of state government; any county, city, town, or any
12 other political subdivision of the state; any public
13 authority, commission, agency, or public benefit corporation;
14 and any other separate corporate instrumentality or unit of
15 state or local government.

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

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

25 (9) PLACE OF EMPLOYMENT. An area under the control
26 of a public or private employer that employees utilize during
27 the course of employment including, but not limited to, work

1 areas, employee lounges, restrooms, conference rooms, meeting
2 rooms, employee cafeterias, and hallways. A private residence
3 is a place of employment if it is a licensed child care, adult
4 day care, or health care facility.

5 (10) PLAYGROUND. Any park or recreational area
6 designated in part to be used by children that has play or
7 sports equipment installed or that has been designated or
8 landscaped for play or sports activities, or any similar
9 facility located on public or private school grounds or on
10 municipal, county, or state grounds.

11 (11) PRIVATE CLUB. An organization, whether
12 incorporated or not, which is the owner, lessee, or occupant
13 of a building or portion thereof used exclusively for club
14 purposes at all times which is operated solely for
15 recreational, fraternal, social, patriotic, political,
16 benevolent, or athletic purposes, but not for pecuniary gain,
17 and which only sells alcoholic beverages incidental to its
18 operation. The affairs and management of the organization are
19 conducted by a board of directors, executive committee, or
20 similar body chosen by the members at an annual meeting. The
21 organization has established bylaws or a constitution, or
22 both, to govern its activities. The organization has been
23 granted an exemption from the payment of federal income tax as
24 a club under 26 U.S.C. Section 501.

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

27 a. A restaurant.

- 1 b. A bar.
- 2 c. A retail or service establishment.
- 3 d. An educational facility.
- 4 e. A laundromat.
- 5 f. A retail food production and marketing
- 6 establishment.
- 7 g. A shopping mall.
- 8 h. A convention facility.
- 9 i. A theater or other facility primarily used for
- 10 exhibiting a performance.
- 11 j. A sports arena.
- 12 k. A health care facility, including waiting rooms,
- 13 hallways, rooms, and wards.
- 14 l. A licensed child care or adult day care facility.
- 15 m. A polling place.
- 16 n. A room in which a public meeting is in progress.
- 17 o. A common area in a multiple unit residential
- 18 facility.
- 19 p. A public transportation vehicle and facility
- 20 including, but not limited to, a bus or taxicab, and a ticket,
- 21 boarding, or waiting area of a public transportation depot.
- 22 q. A restroom, lobby, reception area, service line,
- 23 hallway, elevator, or other common use area the public is
- 24 invited or permitted to enter.
- 25 r. A bingo facility or other gaming facility.
- 26 s. A hotel or motel, including common areas and
- 27 guest rooms.

1 (13) RESTAURANT. A food establishment including, but
2 not limited to, coffee shops, cafeterias, sandwich stands, and
3 private and public school cafeterias, which give or offer for
4 sale food to the public, guests, or employees, as well as
5 kitchens and catering facilities in which food is prepared on
6 the premises for services elsewhere. The term includes a bar
7 area within a restaurant.

8 (14) RETAIL OR SERVICE ESTABLISHMENT. An
9 establishment that sells goods or services to the public.

10 (15) SERVICE LINE. A line in which one or more
11 persons wait for or receive service, whether or not the
12 service involves the exchange of money. A service line
13 includes, but is not limited to, an ATM line, concert line,
14 food vendor line, movie ticket line, and sporting event line.

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

18 (17) SMOKE or SMOKING. The act of inhaling,
19 exhaling, burning, carrying, holding, or possessing any
20 lighted or heated tobacco product including, but not limited
21 to, cigars, cigarettes, or pipes, or any other lighted or
22 heated smoking equipment or device containing any weed, plant,
23 or other combustible substance. The term also includes the use
24 of an e-cigarette and any oral smoking device for the purpose
25 of circumventing the prohibition against smoking in this act.

26 (18) SPORTS ARENA. A place in which a person engages
27 in physical exercise, participates in athletic competition, or

1 witnesses sports or other events, including pavilions,
2 stadiums, gymnasiums, health spas, boxing arenas, swimming
3 pools, roller and ice rinks, and bowling alleys.

4 Section 4. (a) Smoking is prohibited in all enclosed
5 areas of public places and enclosed areas of places of
6 employment.

7 (b) Smoking is prohibited in all enclosed areas of
8 private clubs.

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

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

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

17 (3) All outdoor arenas, sports arenas, and
18 amphitheaters and within 15 feet of bleachers and grandstands
19 for use by spectators at sporting and other public events.

20 (4) Outdoor service lines.

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

22 Section 6. This act does not apply to any of the
23 following:

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

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

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

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

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

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

13 (b) The owner, operator, manager, or other person in
14 control of a place of employment shall do all of the
15 following:

16 (1) Provide written notice that smoking is
17 prohibited in the place of employment to prospective employees
18 upon their application for employment.

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

21 (3) Ensure employees comply with the requirements of
22 this act.

23 (c) The owner, manager, operator, or employee of an
24 area regulated by this act shall direct a person who is
25 smoking in violation of this act to extinguish the product
26 being smoked. If the person does not stop smoking, the owner,
27 manager, operator, or employee shall refuse service and shall

1 immediately ask the person to leave the premises. If the
2 person in violation refuses to leave the premises, the owner,
3 manager, operator, or employee shall immediately contact law
4 enforcement.

5 Section 8. Any other provision of this act to the
6 contrary notwithstanding, an owner, operator, manager, or
7 other person in control of an establishment, facility, or
8 outdoor area may declare the entire establishment, facility,
9 or outdoor area as nonsmoking. Smoking is prohibited in any
10 place in which a sign conforming to the requirements of
11 Section 7 is posted.

12 Section 9. (a) No person or employer shall
13 discharge, refuse to hire, or in any manner retaliate against
14 an employee, applicant for employment, or customer because
15 that employee, applicant, or customer exercises any right
16 afforded by this act or reports or attempts to report a
17 violation of this act.

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

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

26 (b) Except as otherwise provided in this act, a
27 person who owns, manages, operates, or otherwise controls a

1 public place or place of employment and who fails to comply
2 with this act is guilty of a violation as defined in Chapter
3 5, Title 13A, Code of Alabama 1975, punishable by:

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

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

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

19 (d) A third violation and each subsequent violation
20 of this act within one year of a previous violation by a
21 person who owns, manages, operates, or otherwise controls a
22 public place or place of employment may also result in the
23 suspension or revocation of any permit or license issued to
24 the person by any governmental entity for the premises on
25 which the violation occurred.

26 (e) If the civil penalty imposed pursuant to this
27 section is not paid, the department may file an action to

1 collect the civil fine in a court of competent jurisdiction in
2 the county in which the violations occurred. The person
3 committing the violations is responsible for paying all costs
4 associated with the collection of the civil fine.

5 (f) All civil fines collected pursuant to this
6 section shall be deposited to the credit of the department and
7 such funds shall be appropriated, budgeted, and allotted in
8 accordance with Sections 41-4-80 to 41-4-96, inclusive, and
9 41-19-1 to 41-19-12, inclusive, and only in amounts stipulated
10 in the general appropriations bill and other appropriation
11 bills and to be used to implement and administer this act.

12 (g) Violation of this act is a public nuisance,
13 which may be abated by the department, the Attorney General, a
14 district attorney, or the governing body of a municipality or
15 county pursuant to a restraining order, preliminary and
16 permanent injunction, or other means provided for by law. Any
17 costs associated with nuisance abatement by means of any court
18 action may be recovered by the department, Attorney General,
19 district attorney, or other agency seeking relief.

20 (h) Each day on which a violation of this act occurs
21 shall be considered a separate and distinct violation.

22 Section 11. (a) Any agency of this state and any
23 political subdivision or municipal corporation that issues a
24 license, certificate, registration, or other authority or
25 permit to a business or to an owner, operator, or other person
26 in control of a business shall provide notice of the

1 provisions of this act to each applicant for license, permit,
2 or authority.

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

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

9 (d) The State Board of Health may adopt rules as
10 necessary for the implementation, administration, and
11 enforcement of this act.

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

15 Section 12. (a) Nothing in this act shall be
16 construed to restrict or preempt the authority of the State
17 Board of Health, any county board of health, or any county or
18 municipality from adopting and enforcing local laws,
19 ordinances, regulations, or policies that comply with at least
20 the minimum applicable standards of this act.

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

25 Section 13. To the extent that the Legislature
26 appropriates funds, or to the extent that funds are provided
27 from other sources, the department shall engage in a

1 continuing program to explain and clarify the purpose and
2 requirements of this act and to guide employers, owners,
3 operators, and managers regarding compliance with this act.
4 The program may include the publication of a brochure for
5 businesses and individuals explaining the provisions of this
6 act.

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

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

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

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

21 Section 17. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

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