

1 SB197
2 135559-1
3 By Senators Figures, Waggoner, Smitherman, Coleman, Fielding,
4 Irons, Singleton, Ross, Beasley, Smith, Marsh, Bussman, Dial,
5 Keahey, Reed and Whatley (Constitutional Amendment)
6 RFD: Health
7 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, the Alabama Clean Indoor
9 Air Act prohibits smoking in certain public places.

10 This bill would propose an amendment to the
11 Constitution of Alabama of 1901, to repeal the
12 Alabama Clean Indoor Air Act and establish the
13 Alabama Smoke-free Air Amendment of 2012,
14 prohibiting smoking in places of employment and
15 public places, including certain outdoor areas, and
16 would specifically exempt private clubs and private
17 residences not used for child care or adult care,
18 or as a health care facility.

19 The amendment would provide legislative
20 intent and definitions and requirements for owners,
21 operators, managers, and employers; would prohibit
22 retaliation against any person reporting a
23 violation; would provide penalties for violations;
24 would allow political subdivisions to adopt
25 stricter requirements; and would provide for the
26 responsibilities of the Department of Public Health
27 and the State Board of Health.

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2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 Proposing an amendment to the Constitution of
7 Alabama of 1901, to establish the Alabama Smoke-free Air
8 Amendment of 2012; to prohibit smoking in places of employment
9 and public places; to provide legislative intent; to provide
10 definitions; to prohibit smoking in certain outdoor areas; to
11 specifically exempt private clubs and private residences not
12 used for child care or adult care, or as a health care
13 facility; to provide requirements for owners, operators,
14 managers, and employers; to prohibit retaliation against any
15 person reporting a violation; to provide penalties for
16 violations; to allow political subdivisions to adopt stricter
17 requirements; to provide for the duties of the Department of
18 Public Health and the State Board of Health; and to repeal the
19 Alabama Clean Indoor Air Act, Chapter 15A, consisting of
20 Sections 22-15A-1 to 22-15A-10, Title 22, Code of Alabama
21 1975.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. The following amendment to the
24 Constitution of Alabama of 1901, as amended, is proposed and
25 shall become valid as a part thereof when approved by a
26 majority of the qualified electors voting thereon and in

1 accordance with Sections 284, 285, and 287 of the Constitution
2 of Alabama of 1901, as amended:

3 PROPOSED AMENDMENT

4 (a) This amendment shall be known and may be cited
5 as the Alabama Smoke-free Air Amendment of 2012.

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

12 (c) For the purposes of this amendment, 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) DEPARTMENT. The Alabama Department of Public
25 Health.

26 (4) E-CIGARETTE. Any electronic oral device, such as
27 one composed of a heating element, battery, or electronic

1 circuit, or any of these, which provides a vapor of nicotine
2 or any other substance, and the use or inhalation of which
3 simulates smoking. The term includes any such device, whether
4 manufactured, distributed, marketed, or sold as an
5 e-cigarette, e-cigar, e-pipe, or under any other product name
6 or description.

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

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

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

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

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

12 (10) PLAYGROUND. Any park or recreational area
13 designated in part to be used by children that has play or
14 sports equipment installed or that has been designated or
15 landscaped for play or sports activities, or any similar
16 facility located on public or private school grounds or on
17 municipal, county, or state grounds.

18 (11) PRIVATE CLUB. An organization, whether
19 incorporated or not, which is the owner, lessee, or occupant
20 of a building or portion thereof used exclusively for club
21 purposes at all times which is operated solely for
22 recreational, fraternal, social, patriotic, political,
23 benevolent, or athletic purposes, but not for pecuniary gain,
24 and which only sells alcoholic beverages incidental to its
25 operation. The affairs and management of the organization are
26 conducted by a board of directors, executive committee, or
27 similar body chosen by the members at an annual meeting. The

1 organization has established bylaws or a constitution, or
2 both, to govern its activities. The organization has been
3 granted an exemption from the payment of federal income tax as
4 a club under 26 U.S.C. Section 501.

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

- 7 a. A restaurant.
- 8 b. A bar.
- 9 c. A retail or service establishment.
- 10 d. An educational facility.
- 11 e. A laundromat.
- 12 f. A retail food production and marketing
13 establishment.
- 14 g. A shopping mall.
- 15 h. A convention facility.
- 16 i. A theater or other facility primarily used for
17 exhibiting a performance.
- 18 j. A sports arena.
- 19 k. A health care facility, including waiting rooms,
20 hallways, rooms, and wards.
- 21 l. A licensed child care or adult day care facility.
- 22 m. A polling place.
- 23 n. A room in which a public meeting is in progress.
- 24 o. A common area in a multiple unit residential
25 facility.

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

4 q. A restroom, lobby, reception area, service line,
5 hallway, elevator, or other common use area the public is
6 invited or permitted to enter.

7 r. A bingo facility or other gaming facility.

8 s. A hotel or motel, including common areas and
9 guest rooms.

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

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

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

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

1 (17) SMOKE or SMOKING. The act of inhaling,
2 exhaling, burning, carrying, holding, or possessing any
3 lighted or heated tobacco product including, but not limited
4 to, cigars, cigarettes, or pipes, or any other lighted or
5 heated smoking equipment or device containing any weed, plant,
6 or other combustible substance. The term also includes the use
7 of an e-cigarette and any oral smoking device for the purpose
8 of circumventing the prohibition against smoking in this
9 amendment.

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

15 (d) Smoking is prohibited in all enclosed areas of
16 public places and enclosed areas of places of employment.

17 (e) Smoking is prohibited in all of the following
18 outdoor places and areas:

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

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

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

1 (4) Outdoor service lines.

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

3 (f) This amendment does not apply to any of the
4 following:

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

7 (2) Outdoor areas of places of employment, except as
8 provided in subsection (e).

9 (3) A private club.

10 (g) (1) The owner, operator, manager, or other person
11 in control of a public place or place of employment shall do
12 all of the following:

13 a. Clearly and conspicuously post in that place "No
14 Smoking" signs or the international "No Smoking" symbol, that
15 consists of a pictorial representation of a burning cigarette
16 enclosed in a red circle with a diagonal red bar.

17 b. Clearly and conspicuously post at each entrance
18 to that place a sign stating that smoking is prohibited.

19 c. Remove all ashtrays from any area where smoking
20 is prohibited by this amendment, except for ashtrays displayed
21 for sale and not for use on the premises.

22 (2) The owner, operator, manager, or other person in
23 control of a place of employment shall do all of the
24 following:

25 a. Provide written notice that smoking is prohibited
26 in the place of employment to prospective employees upon their
27 application for employment.

1 b. Communicate the prohibition on smoking to all
2 existing employees upon ratification of this amendment.

3 c. Ensure employees comply with the requirements of
4 this amendment.

5 (3) The owner, manager, operator, or employee of an
6 area regulated by this amendment shall direct a person who is
7 smoking in violation of this amendment to extinguish the
8 product being smoked. If the person does not stop smoking, the
9 owner, manager, operator, or employee shall refuse service and
10 shall immediately ask the person to leave the premises. If the
11 person in violation refuses to leave the premises, the owner,
12 manager, operator, or employee shall immediately contact law
13 enforcement.

14 (h) Any other provision of this amendment to the
15 contrary notwithstanding, an owner, operator, manager, or
16 other person in control of an establishment, facility, or
17 outdoor area may declare the entire establishment, facility,
18 or outdoor area as nonsmoking. Smoking is prohibited in any
19 place in which a sign conforming to the requirements of
20 subsection (g) is posted.

21 (i) (1) No person or employer shall discharge, refuse
22 to hire, or in any manner retaliate against an employee,
23 applicant for employment, or customer because that employee,
24 applicant, or customer exercises any right afforded by this
25 amendment or reports or attempts to report a violation of this
26 amendment.

1 (2) An employee working in a setting in which an
2 employer allows smoking in violation of this amendment does
3 not waive or surrender any legal right the employee may have
4 against the employer or any other party.

5 (j) (1) A person who smokes in an area where smoking
6 is prohibited by this amendment is guilty of a violation as
7 defined in Chapter 5, Title 13A, Code of Alabama 1975,
8 punishable by a fine not exceeding fifty dollars (\$50).

9 (2) Except as otherwise provided in this amendment,
10 a person who owns, manages, operates, or otherwise controls a
11 public place or place of employment and who fails to comply
12 with this amendment is guilty of a violation as defined in
13 Chapter 5, Title 13A, Code of Alabama 1975, punishable by:

14 a. A fine not exceeding one hundred dollars (\$100)
15 for a first violation.

16 b. A fine not exceeding two hundred dollars (\$200)
17 for a second or subsequent violation occurring within one year
18 of the date of a previous violation.

19 (3) In addition to the criminal fines provided in
20 subdivision (2), upon confirmation of a third violation and
21 each subsequent violation of this amendment within one year of
22 a previous violation by a person who owns, manages, operates,
23 or otherwise controls the public place or place of employment,
24 the department may assess a civil fine of up to one thousand
25 dollars (\$1,000) for the third and each subsequent violation.
26 A person may appeal the assessment of the civil fine imposed

1 for a third and each subsequent violation and a hearing shall
2 be held pursuant to the Alabama Administrative Procedure Act.

3 (4) A third violation and each subsequent violation
4 of this amendment within one year of a previous violation by a
5 person who owns, manages, operates, or otherwise controls a
6 public place or place of employment may also result in the
7 suspension or revocation of any permit or license issued to
8 the person by any governmental entity for the premises on
9 which the violation occurred.

10 (5) If the civil penalty imposed pursuant to this
11 subsection is not paid, the department may file an action to
12 collect the civil fine in a court of competent jurisdiction in
13 the county in which the violations occurred. The person
14 committing the violations is responsible for paying all costs
15 associated with the collection of the civil fine.

16 (6) All civil fines collected pursuant to this
17 subsection shall be deposited to the credit of the department
18 and such funds shall be appropriated, budgeted, and allotted
19 in accordance with Sections 41-4-80 to 41-4-96, inclusive, and
20 41-19-1 to 41-19-12, inclusive, Code of Alabama 1975, and only
21 in amounts stipulated in the general appropriations bill and
22 other appropriation bills and to be used to implement and
23 administer this amendment.

24 (7) Violation of this amendment is a public
25 nuisance, which may be abated by the department, the Attorney
26 General, a district attorney, or the governing body of a
27 municipality or county pursuant to a restraining order,

1 preliminary and permanent injunction, or other means provided
2 for by law. Any costs associated with nuisance abatement by
3 means of any court action may be recovered by the department,
4 Attorney General, district attorney, or other agency seeking
5 relief.

6 (8) Each day on which a violation of this amendment
7 occurs shall be considered a separate and distinct violation.

8 (k)(1) Any agency of this state and any political
9 subdivision or municipal corporation that issues a license,
10 certificate, registration, or other authority or permit to a
11 business or to an owner, operator, or other person in control
12 of a business shall provide notice of the provisions of this
13 amendment to each applicant for license, permit, or authority.

14 (2) A citizen may file a complaint under this
15 amendment with the department or a county health department.

16 (3) The department, or a designee of the department,
17 or the State Fire Marshal, or his or her deputy, or any member
18 of a local fire department may enter any building or premises
19 in this state to determine compliance with this amendment.

20 (4) The State Board of Health may adopt rules as
21 necessary for the implementation, administration, and
22 enforcement of this amendment.

23 (5) Any other provision of this amendment to the
24 contrary notwithstanding, an employee or private citizen may
25 bring legal action to enforce this amendment.

26 (1)(1) Nothing in this amendment shall be construed
27 to restrict or preempt the authority of the State Board of

1 Health, any county board of health, or any county or
2 municipality from adopting and enforcing local laws,
3 ordinances, regulations, or policies that comply with at least
4 the minimum applicable standards of this amendment.

5 (2) Nothing in this amendment shall be construed to
6 restrict the power of any employer or entity from adopting and
7 enforcing standards, policies, and protocols to prohibit
8 smoking to a greater degree than this amendment.

9 (m) To the extent that the Legislature appropriates
10 funds, or to the extent that funds are provided from other
11 sources, the department shall engage in a continuing program
12 to explain and clarify the purpose and requirements of this
13 amendment and to guide employers, owners, operators, and
14 managers regarding compliance with this amendment. The program
15 may include the publication of a brochure for businesses and
16 individuals explaining the provisions of this amendment.

17 (n) (1) The department may delegate to a state agency
18 or political subdivision of this state any functions, powers,
19 or duties imposed by this amendment.

20 (2) The department may enter into agreements with
21 third parties to determine compliance with this amendment.

22 (o) This amendment may not be interpreted or
23 construed to permit smoking where smoking is otherwise
24 restricted by other applicable state or local law. This
25 amendment shall be liberally construed to effect its purposes.

1 (p) The Alabama Clean Indoor Air Act, Chapter 15A,
2 consisting of Sections 22-15A-1 to 22-15A-10, inclusive, of
3 Title 22, Code of Alabama 1975, is repealed.

4 Section 2. An election upon the proposed amendment
5 shall be held at the General Election of 2012, in accordance
6 with Sections 284 and 285 of the Constitution of Alabama of
7 1901, now appearing as Sections 284 and 285 of the Official
8 Recompilation of the Constitution of Alabama of 1901, as
9 amended, and the election laws of this state.

10 Section 3. The appropriate election official shall
11 assign a ballot number for the proposed constitutional
12 amendment on the election ballot and shall set forth the
13 following description of the substance or subject matter of
14 the proposed constitutional amendment:

15 "Proposing an amendment to the Constitution of
16 Alabama of 1901, to establish the Alabama Smoke-free Air
17 Amendment of 2012, prohibiting smoking in places of employment
18 and public places, including certain outdoor areas, with
19 specific exemptions for private clubs and private residences
20 not used for child care or adult care, or as a health care
21 facility, and to repeal the existing Alabama Clean Indoor Air
22 Act.

23 "Proposed by Act _____."

24 This description shall be followed by the following
25 language:

26 "Yes () No ()."