

1 SB195
2 147255-2
3 By Senators Figures, Coleman, Beasley, Dunn, Irons, Singleton,
4 Ross, Bussman, Dial, Fielding, Reed, Smitherman, Waggoner,
5 Whatley, Marsh, Keahey, Sanders and Smith
6 RFD: Health
7 First Read: 12-FEB-13

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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 repeal the Alabama Clean
11 Indoor Air Act and establish the Alabama Smoke-free
12 Air Act of 2013.

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

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 specifically exempt private
20 clubs and private residences not used for child
21 care or adult care, or as a 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

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4 To establish the Alabama Smoke-free Air Act of 2013;
5 to prohibit smoking in places of employment and public places;
6 to provide legislative intent; to provide definitions; to
7 prohibit smoking in certain outdoor areas; to specifically
8 exempt private clubs and private residences not used for child
9 care or adult care, or as a health care facility; to provide
10 requirements for owners, operators, managers, and employers;
11 to prohibit retaliation against any person reporting a
12 violation; to provide penalties for violations; to allow
13 political subdivisions to adopt stricter requirements; to
14 provide for the duties of the Department of Public Health and
15 the State Board of Health; to repeal the Alabama Clean Indoor
16 Air Act, Chapter 15A, consisting of Sections 22-15A-1 to
17 22-15A-10, Title 22, Code of Alabama 1975; and in connection
18 therewith to have as its purpose or effect the requirement of
19 a new or increased expenditure of local funds within the
20 meaning of Amendment 621 of the Constitution of Alabama of
21 1901, now appearing as Section 111.05 of the Official
22 Recompilation of the Constitution of Alabama of 1901, as
23 amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall be known and may be cited
26 as the Alabama Smoke-free Air Act of 2013.

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

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

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

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

18 (3) CIGAR BAR. An establishment that is primarily
19 devoted to the on-site business of selling cigars or cigar
20 tobacco and the on-site sale or rental of humidors. The
21 establishment may be licensed to sell alcoholic beverages for
22 consumption by guests on the premises and in which the serving
23 of food is only incidental to the consumption of those
24 beverages.

25 (4) DEPARTMENT. The Alabama Department of Public
26 Health.

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

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

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

24 (8) ENCLOSED AREA. All space between a floor and
25 ceiling that is bounded on at least 50 percent of its sides by
26 walls, doorways, or windows, whether open or closed. A wall

1 includes any retractable divider, garage door, or other
2 physical barrier, whether temporary or permanent.

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

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

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

20 (12) PRIVATE CLUB. An organization, whether
21 incorporated or not, which is the owner, lessee, or occupant
22 of a building or portion thereof used exclusively for club
23 purposes at all times which is operated solely for
24 recreational, fraternal, social, patriotic, political,
25 benevolent, or athletic purposes, but not for pecuniary gain,
26 and which only sells alcoholic beverages incidental to its
27 operation. The affairs and management of the organization are

1 conducted by a board of directors, executive committee, or
2 similar body chosen by the members at an annual meeting. The
3 organization has established bylaws or a constitution, or
4 both, to govern its activities. The organization has been
5 granted an exemption from the payment of federal income tax as
6 a club under 26 U.S.C. Section 501.

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

- 9 a. A restaurant.
- 10 b. A bar.
- 11 c. A retail or service establishment.
- 12 d. An educational facility.
- 13 e. A laundromat.
- 14 f. A retail food production and marketing
15 establishment.
- 16 g. A shopping mall.
- 17 h. A convention facility.
- 18 i. A theater or other facility primarily used for
19 exhibiting a performance.
- 20 j. A sports arena.
- 21 k. A health care facility, including waiting rooms,
22 hallways, rooms, and wards.
- 23 l. A licensed child care or adult day care facility.
- 24 m. A polling place.
- 25 n. A room in which a public meeting is in progress.
- 26 o. A common area in a multiple unit residential
27 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 (14) 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 (15) RETAIL OR SERVICE ESTABLISHMENT. An
18 establishment that sells goods or services to the public.

19 (16) 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 (17) SHOPPING MALL. A public walkway or hall area
25 that serves to connect retail, service, or professional
26 establishments.

1 (18) 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 does not include the
7 use of an e-cigarette.

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

13 Section 4. Smoking is prohibited in all enclosed
14 areas of public places and enclosed areas of places of
15 employment.

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

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

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

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

27 (4) Outdoor service lines.

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

2 Section 6. This act does not apply to any of the
3 following:

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

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

8 (3) A private club that is in existence and
9 operating on the effective date of this act. Notwithstanding
10 the foregoing, this act shall apply to a private club that
11 comes into existence after the effective date of this act.

12 (4) A tobacco manufacturer, leaf dealer, importer,
13 wholesaler, or distributor facility.

14 (5) A cigar bar.

15 (6) A retail tobacco shop or venue.

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

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

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

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

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

4 (1) Provide written notice that smoking is
5 prohibited in the place of employment to prospective employees
6 upon their application for employment.

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

9 (3) Ensure employees comply with the requirements of
10 this act.

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

20 Section 8. Any other provision of this act to the
21 contrary notwithstanding, an owner, operator, manager, or
22 other person in control of an establishment, facility, or
23 outdoor area may declare the entire establishment, facility,
24 or outdoor area as nonsmoking. Smoking is prohibited in any
25 place in which a sign conforming to the requirements of
26 Section 7 is posted.

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

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

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

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

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

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

25 (c) In addition to the criminal fines provided in
26 subsection (b), upon confirmation of a third violation and
27 each subsequent violation of this act within one year of a

1 previous violation by a person who owns, manages, operates, or
2 otherwise controls the public place or place of employment,
3 the department may assess a civil fine of up to one thousand
4 dollars (\$1,000) for the third and each subsequent violation.
5 A person may appeal the assessment of the civil fine imposed
6 for a third and each subsequent violation and a hearing shall
7 be held pursuant to the Alabama Administrative Procedure Act.

8 (d) A third violation and each subsequent violation
9 of this act within one year of a previous violation by a
10 person who owns, manages, operates, or otherwise controls a
11 public place or place of employment may also result in the
12 suspension or revocation of any permit or license issued to
13 the person by any governmental entity for the premises on
14 which the violation occurred.

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

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

1 (g) 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 (h) 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.