

1 HB149  
2 126289-1  
3 By Representative McClurkin  
4 RFD: Health  
5 First Read: 03-MAR-11

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would prohibit smoking in places  
9 of employment, public places, and enclosed areas of  
10 private clubs; provide defined terms; provide for  
11 exemptions; require posting of smoking prohibition  
12 signs; allow building or property owners to  
13 designate nonsmoking areas; provide enforcement by  
14 the Board of Health; and to repeal the existing  
15 Alabama Clean Indoor Act.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 To prohibit smoking in places of employment, public  
22 places, private clubs, and other areas; to provide a fine for  
23 violations; to provide enforcement by the Board of Health; and  
24 to repeal Sections 22-15A-1 through 22-15A-10, Code of Alabama  
25 1975.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. This act shall be known as the Alabama  
2 Smoke-free Air Act of 2011.

3           Section 2. The Legislature finds and declares that  
4 the purposes of this act are (1) to protect the public's  
5 health and welfare by prohibiting smoking in public places and  
6 places of employment; and (2) to recognize that the need to  
7 breathe smoke-free air shall have priority over the desire to  
8 smoke.

9           Section 3. As used in this act and for the purposes  
10 of this act, the following terms shall have the following  
11 meanings:

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

18           (2) BUSINESS. Any of the following:

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

23           b. A private club.

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 and a battery or electronic

1 circuit, or both, which provides a vapor of nicotine or any  
2 other substance, and the use or inhalation of which simulates  
3 smoking. The term shall include 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 descriptor.

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. This term includes every person  
11 described above regardless of whether such 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. This term shall also  
16 include, but not be limited to, the legislative, executive,  
17 and judicial branches of state government; any county, city,  
18 town, or any other political subdivision of the state; any  
19 public authority, commission, agency, or public benefit  
20 corporation; and any other separate corporate instrumentality  
21 or unit of state or local government.

22 (7) ENCLOSED AREA. All space between a floor and  
23 ceiling that is bounded on all sides by walls, doorways, or  
24 windows, whether open or closed. A wall includes any  
25 retractable divider, garage door, or other physical barrier,  
26 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 not a place of employment unless it is required to be  
11 licensed as a child care, adult day care, or health care  
12 facility.

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

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

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

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

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

10 (13) RESTAURANT. A food establishment, including,  
11 but not limited to, coffee shops, cafeterias, sandwich stands,  
12 and private and public school cafeterias, which gives or  
13 offers for sale food to the public, guests, or employees, as  
14 well as kitchens and catering facilities in which food is  
15 prepared on the premises for services elsewhere. The term  
16 "restaurant" includes a bar 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 nor the  
21 service involves the exchange of money. A service line  
22 includes, but is not limited to, ATM lines, concert lines,  
23 food vendor lines, movie ticket lines, and sporting event  
24 lines.

25 (16) SHOPPING MALL. A public walkway or hall area  
26 that serves to connect retail, service, or professional  
27 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. "Smoking" also includes the  
7 use of e-cigarettes and any oral smoking device for the  
8 purpose of circumventing the prohibition of smoking in this  
9 act.

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 Section 4. (a) Smoking shall be prohibited in all  
16 enclosed areas of public places and enclosed areas of places  
17 of employment.

18 (b) Smoking shall be prohibited in all enclosed  
19 areas of private clubs.

20 Section 5. Smoking shall be prohibited in the  
21 following outdoor places and areas:

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

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



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

4           (4) Outdoor service lines.

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

6           Section 6. This act shall not apply to the  
7 following:

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

10           (2) Outdoor areas of places of employment, except  
11 those covered by Section 5.

12           Section 7. (a) The owner, operator, manager, or  
13 other person in control of a public place or place of  
14 employment shall:

15           (1) Clearly and conspicuously post in that place "No  
16 Smoking" signs or the international "No Smoking" symbol  
17 (consisting of a pictorial representation of a burning  
18 cigarette enclosed in a red circle with a red bar across it).

19           (2) Clearly and conspicuously post at every entrance  
20 to that place a sign stating that smoking is prohibited.

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

24           (b) The owner, operator, manager, or other person in  
25 control of a place of employment shall:

1 (1) Provide written notice that smoking is  
2 prohibited in the place of employment to perspective employees  
3 upon their application for employment.

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

6 (3) Ensure employees comply with the requirements of  
7 this act.

8 (c) The owner, operator, manager, or other person in  
9 control of a place of employment shall direct a person who is  
10 smoking in a public place to extinguish the lighted tobacco  
11 product or smoking equipment or device. If the person does not  
12 stop smoking, the owner, manager, operator, or employee shall  
13 refuse service and shall immediately ask the person to leave  
14 the premises. If the person in violation refuses to leave the  
15 premises, the owner, manager, operator, or employee shall  
16 contact a law enforcement agency.

17 Section 8. Notwithstanding any other provision of  
18 this act, an owner, operator, manager, or other person in  
19 control of an establishment, facility, or outdoor area may  
20 declare that entire establishment, facility, or outdoor area  
21 as a nonsmoking place. Smoking shall be prohibited in any  
22 place in which a sign conforming to the requirements of  
23 Section 7 is posted.

24 Section 9. (a) No person or employer shall  
25 discharge, refuse to hire, or in any manner retaliate against  
26 an employee, applicant for employment, or customer, because  
27 that employee, applicant, or customer exercises any right

1       afforded by this act or reports or attempts to report a  
2       violation of this act.

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

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

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

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

19              (2) A fine not exceeding two hundred dollars (\$200)  
20       for a second and each subsequent violation within one year of  
21       a previous violation.

22              (c) In addition to the criminal fines established in  
23       subsection (b), the department, upon confirmation of a third  
24       violation and each subsequent violation of this act within one  
25       year of a previous violation by a person who owns, manages,  
26       operates, or otherwise controls the public place or place of  
27       employment, may assess a civil fine of up to one thousand

1 dollars (\$1,000) for the third and each subsequent violation.  
2 A person may appeal the assessment of the civil fine for a  
3 third and each subsequent violation and a hearing shall be  
4 held pursuant to the requirements of the Alabama  
5 Administrative Procedure Act.

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

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

19 (f) All civil fines collected pursuant to this  
20 section shall be deposited to the credit of the department and  
21 shall be continuously appropriated to the department to  
22 implement and administer this act.

23 (g) Violation of this act is declared to be a public  
24 nuisance, which may be abated by the Department of Public  
25 Health, the office of the Attorney General, a district  
26 attorney's office, a municipality, or county commission by  
27 restraining order, preliminary and permanent injunction, or

1 other means provided for by law. Any costs associated with  
2 nuisance abatement by means of any court action may be  
3 recovered by the department, district attorney's office, or  
4 other agency seeking a restraining order or injunctive relief.

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

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

14 (b) Any citizen who desires to register a complaint  
15 under this act may file it with the Department of Public  
16 Health or a county health department.

17 (c) The department or its designees or the State  
18 Fire Marshal or his or her deputies or any member of a fire  
19 department may enter any building or premises in this state to  
20 determine compliance with this act.

21 (d) The State Board of Health may adopt rules as are  
22 necessary for the implementation, administration, and  
23 enforcement of this act.

24 Section 12. (a) Nothing herein shall be construed to  
25 restrict or preempt the authority of the State Board of Health  
26 or any county board of health or any county, city, or town to  
27 adopt and enforce local laws, ordinances, regulations, or

1 policies that comply with at least the minimum applicable  
2 standards required in this act.

3 (b) Nothing in this act shall be construed to  
4 restrict the power of any employer or entity to adopt and  
5 enforce standards, policies, and protocols to prohibit smoking  
6 to a greater degree than this act.

7 Section 13. To the extent that the Legislature  
8 appropriates funds or to the extent that funds are provided  
9 from other sources, the department shall engage in a  
10 continuing program to explain and clarify the purpose and  
11 requirements of this act and to guide employers, owners,  
12 operators, and managers in complying with this act. The  
13 program may include publication of a brochure for businesses  
14 and individuals that explains this act.

15 Section 14. (a) The department may delegate to a  
16 state agency or political subdivision of this state any  
17 functions, powers, or duties under this act.

18 (b) The department may enter into agreement with  
19 third parties to determine compliance with this act.

20 Section 15. This act shall not be interpreted or  
21 construed to permit smoking where it is otherwise restricted  
22 by other applicable state or local laws. This act shall be  
23 liberally construed to effect its purposes.

24 Section 16. The provisions of this act are  
25 severable. If any part of this act is declared invalid or  
26 unconstitutional, that declaration shall not affect the part  
27 which remains.

1                   Section 17. Sections 22-15A-1 to 22-15A-10,  
2                   inclusive, Code of Alabama 1975, are specifically repealed and  
3                   superseded by this act.

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