

1 SB168  
2 156567-1  
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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8 SYNOPSIS: Under existing law, the Alabama Clean  
9 Indoor Air Act prohibits smoking in certain public  
10 places.

11 This bill would repeal the Alabama Clean  
12 Indoor Air Act and establish the Alabama Smoke-free  
13 Air Act of 2014.

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

16 This bill would provide legislative intent  
17 and definitions.

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

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

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

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

1                   This bill would provide penalties for  
2                   violations.

3                   This bill would allow political subdivisions  
4                   to adopt stricter requirements.

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

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

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

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

6 To establish the Alabama Smoke-free Air Act of 2014;  
7 to prohibit smoking in places of employment and public places;  
8 to provide legislative intent; to provide definitions; to  
9 prohibit smoking in certain outdoor areas; to specifically  
10 exempt private clubs and private residences not used for child  
11 care or adult care, or as a health care facility; to provide  
12 requirements for owners, operators, managers, and employers;  
13 to prohibit retaliation against any person reporting a  
14 violation; to provide penalties for violations; to allow  
15 political subdivisions to adopt stricter requirements; to  
16 provide for the duties of the Department of Public Health and  
17 the State Board of Health; to repeal the Alabama Clean Indoor  
18 Air Act, Chapter 15A, consisting of Sections 22-15A-1 to  
19 22-15A-10, Title 22, Code of Alabama 1975; and in connection  
20 therewith to have as its purpose or effect the requirement of  
21 a new or increased expenditure of local funds within the  
22 meaning of Amendment 621 of the Constitution of Alabama of  
23 1901, now appearing as Section 111.05 of the Official  
24 Recompilation of the Constitution of Alabama of 1901, as  
25 amended.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

1 (4) DEPARTMENT. The Alabama Department of Public  
2 Health.

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

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

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

26 (8) ENCLOSED AREA. All space between a floor and  
27 ceiling that is bounded on at least 50 percent of its sides by

1 walls, doorways, or windows, whether open or closed. A wall  
2 includes any retractable divider, garage door, or other  
3 physical barrier, whether temporary or permanent.

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

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

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

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

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

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

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



1           o. A common area in a multiple unit residential  
2 facility.

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

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

9           r. A bingo facility or other gaming facility.

10          s. A hotel or motel, including common areas and  
11 guest rooms.

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

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

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

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

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

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

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

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

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

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

1           (3) All outdoor arenas, sports arenas, and  
2           amphitheaters 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 does not apply to any of 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 as  
11          provided in Section 5.

12          (3) A private club that is in existence and  
13          operating on the effective date of this act. Notwithstanding  
14          the foregoing, this act shall apply to a private club that  
15          comes into existence after 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          Section 7. (a) The owner, operator, manager, or  
21          other person in control of a public place or place of  
22          employment shall do all of the following:

23          (1) Clearly and conspicuously post in that place "No  
24          Smoking" signs or the international "No Smoking" symbol, that  
25          consists of a pictorial representation of a burning cigarette  
26          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 shall 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 shall 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) A third violation and each subsequent violation  
15 of this act within one year of a previous violation by a  
16 person who owns, manages, operates, or otherwise controls a  
17 public place or place of employment may also result in the  
18 suspension or revocation of any permit or license issued to  
19 the person by any governmental entity for the premises on  
20 which the violation occurred.

21           (e) If the civil penalty imposed pursuant to this  
22 section is not paid, the department may file an action to  
23 collect the civil fine in a court of competent jurisdiction in  
24 the county in which the violations occurred. The person  
25 committing the violations is responsible for paying all costs  
26 associated with the collection of the civil fine.

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

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

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

18 Section 11. (a) Any agency of this state and any  
19 political subdivision or municipal corporation that issues a  
20 license, certificate, registration, or other authority or  
21 permit to a business or to an owner, operator, or other person  
22 in control of a business shall provide notice of the  
23 provisions of this act to each applicant for license, permit,  
24 or authority.

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

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

5 (d) The State Board of Health may adopt rules as  
6 necessary for the implementation, administration, and  
7 enforcement of this act.

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

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

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

21 Section 13. To the extent that the Legislature  
22 appropriates funds, or to the extent that funds are provided  
23 from other sources, the department shall engage in a  
24 continuing program to explain and clarify the purpose and  
25 requirements of this act and to guide employers, owners,  
26 operators, and managers regarding compliance with this act.  
27 The program may include the publication of a brochure for



1 businesses and individuals explaining the provisions of this  
2 act.

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

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

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

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

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

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

