SB126

59521-2

By Senators Figures, Barron, Enfinger, Mitchell, Dixon, Ross,
Mitchem, Roberts, Penn, Means, Tanner, Butler, Steele,
Preuitt, McClain, Denton, Smitheman, Dial, Waggoner, Marsh,
Myers, Byrne, Lee, Escott, Biddle, Erwin, Holley, Bedford,
Little (Z), Little (T), Sanders, and Poole

RFD: Health

First Read: 04-MAR-03
ENROLLED, An Act,

To establish the Alabama Clean Indoor Air Act; to prohibit smoking in certain public places; to request that employers adopt a smoking policy and provide smoke-free areas in places of employment; to prescribe penalties for violations; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Alabama Clean Indoor Air Act."

Section 2. The Legislature finds as follows:

(1) Numerous studies have found that tobacco smoke may be a major contributor to indoor air pollution and that breathing secondhand smoke may be a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

(2) Health hazards induced by breathing secondhand smoke may include lung cancer, heart disease, respiratory
infection, and decreased respiratory function, including bronchospasm.

Section 3. As used in this act, the following words and phrases shall have the following meanings:

(1) BAR AND LOUNGE. Any establishment which is primarily devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

(2) CHILD CARE FACILITY. Any facility caring for children.

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

(4) EMPLOYER. Any person, partnership, association, corporation, or nonprofit entity that employs five or more persons, including the legislative, executive, and judicial branches of state government; and any county, city, town, or village or any other political subdivision of the state; any public authority, commission, agency, or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

(5) GOVERNMENT BUILDING. Any building owned or operated by the state, including the legislative, executive, and judicial branches of state government; any county, city,
town, or village or any other political subdivision of the
state; any public authority, commission, agency, or public
benefit corporation; or any other separate corporate
instrumentality or unit of state or local government.

(6) PUBLIC CONVEYANCE. A bus, taxi, train, trolley,
boat, and any other means of public transit.

(7) PUBLIC MEETING. Any meeting open to the public
unless held in a private residence.

(8) PUBLIC PLACE. Any enclosed area to which the
public is permitted, including, but not limited to,
auditoriums, elevators, hospitals, nursing homes, libraries,
courtrooms, jury waiting rooms and deliberation rooms,
theatres, museums, common areas of retirement homes,
restaurants, laundromats, health facilities, educational
facilities, shopping malls, government buildings, sports and
recreational facilities, places of employment, airports,
banks, retail stores, and service establishments. A private
residence is not a "public place."

(9) SERVICE LINE. Any indoor line at which one or
more persons are waiting for or receiving service of any kind,
whether or not the service involves the exchange of money.

(10) SMOKING. The burning of a lighted cigarette,
cigar, pipe, or any other matter or substance that contains
tobacco.
(11) SMOKING AREA. Any designated area meeting the requirements of Section 7.

Section 4. (a) No person shall smoke in a public place or at a public meeting except as otherwise provided in this subsection and in Section 7. This prohibition does not apply in any of the following places:

(1) Bars and lounges.

(2) Retail tobacco stores and tobacco businesses.

(3) Limousines used under private hire by an individual or corporation.

(4) Hotel and motel rooms rented to guests, except for those rooms designated by the hotels and motels as "no smoking" rooms.

(b) Smoking by patients in a chemical dependency treatment program or mental health program may be allowed in a separated well-ventilated area pursuant to a policy established by the administrator of the program that identifies circumstances in which prohibiting smoking would interfere with the treatment of persons recovering from chemical dependency or mental illness.

Section 5. (a) By December 1, 2003, each employer having an enclosed place of employment may adopt, implement, make known, and maintain a written smoking policy which shall contain at a minimum all of the following requirements:
(1) Any employee in a place of employment shall have the right to designate his or her work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer.

(2) Smoking shall be prohibited in all common work areas in a place of employment, unless a majority of the workers who work in that area agree that a smoking area will be designated.

(b) The smoking policy shall be communicated to all employees within three weeks of its adoption. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(c) Notwithstanding any other provisions of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

Section 6. (a) Pursuant to this section, the person in charge of a public place may designate an area for the use of smokers. Notwithstanding the foregoing, a smoking area may not be designated and no person may smoke in any of the following unless the area is enclosed and well ventilated:

(1) Child care facilities.

(2) Hospitals, health care clinics, doctors' offices, physical therapy facilities, and dentists' offices.

(3) Elevators.
(4) Buses, taxicabs, and other means of public conveyance.

(5) Government buildings, except private offices.

(6) Restrooms.

(7) Service lines.

(8) Public areas of aquariums, galleries, libraries, and museums.

(9) Lobbies, hallways, and other common areas in apartment buildings, senior citizen residences, nursing homes, and other multiple-unit residential facilities.

(10) Polling places.

(11) Schools or other school facilities or enclosed school sponsored events for grades K-12.

(12) Retail establishments, excluding restaurants, except areas in retail establishments not open to the public.

(13) Lobbies, hallways, and other common areas in multiple-unit commercial facilities.

(b) If a smoking area is designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke, and no more than one-fourth of the total square footage in any public place within a single enclosed area shall be reserved and designated for smokers unless clientele dictates otherwise. No area designated as a smoking area shall contain common facilities which are expected to be used by the public.
(c) Nothing in this section shall be construed to prevent any owner, operator, manager, or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility.

(d) Notwithstanding any other provision of this section or this act, if any restaurant is deemed by its owner as being too small to have a designated smoking area, it shall be left up to the discretion of the owner if the facility will be a "smoking" or a "nonsmoking" facility.

Section 7. (a) A "No Smoking" sign or signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across, shall be prominently posted and properly maintained where smoking is prohibited by this act, by the owner, operator, manager, or other person in charge of the facility. "Smoking Area" signs shall also be posted as appropriate in public places.

(b) The person(s) in charge of a public place who observes a person in possession of a lighted tobacco product in apparent violation of this act shall inform that person that smoking is not permitted in that area by law.

Section 8. (1) The department, in cooperation with other agencies, shall enforce this act and to implement enforcement shall adopt, in consultation with the State Fire
1. Marshal, rules specifying procedures to be followed by
2. enforcement personnel in investigating complaints and
3. notifying alleged violators and rules specifying procedures by
4. which appeals may be taken by aggrieved parties.
5. (2) Public agencies responsible for the management
6. and maintenance of government buildings shall report observed
7. violations to the department. The State Fire Marshal shall
8. report to the department observed violations of Section 5 or 6
9. found during its periodic inspections conducted pursuant to
10. its regulatory authority. The department or division, upon
11. notification of observed violations of Section 5 or 6, shall
12. issue to the proprietor or other person in charge of the
13. public place a notice to comply with Section 5 or 6, or both.
14. If such person fails to comply within 30 days after receipt of
15. such notice, the department or the division shall assess a
16. civil penalty against him or her not to exceed fifty dollars
17. ($50) for the first violation, not to exceed one hundred
18. dollars ($100) for the second violation, and not to exceed two
19. hundred dollars ($200) for each subsequent violation. The
20. imposition of a civil penalty shall be in accordance with the
21. Alabama Administrative Procedure Act. If a person refuses to
22. comply with the provisions of this act, after having been
23. assessed a penalty pursuant to this section, the department or
24. the division may file a complaint in the circuit court of the
county in which such public place is located to require
compliance.

(3) All fine moneys collected pursuant to this
section shall be deposited into the State General Fund.

Section 9. Any person who violates Section 4 of this
act commits a violation, punishable by a fine of twenty-five
dollars ($25) for each violation. Jurisdiction shall be with
the appropriate district or municipal court. A charge of a
violation shall be treated in the same manner as a traffic
citation. Any law enforcement officer may issue a citation
pursuant to this section.

Section 10. The provisions of this act are declared
to be severable, and if any provision, word, phrase, or clause
of this act or the application thereof to any person shall be
held invalid, such invalidity shall not affect the validity of
the remaining portions of this act.

Section 11. Nothing herein shall be construed to
restrict the power of any county, city, town, or village to
adopt and enforce local laws, ordinances, or regulations that
comply with at least the minimum applicable standards set
forth in this act.

Section 12. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621 because the
bill defines a new crime or amends the definition of an
existing crime.

Section 13. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.
SB126

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB126

Senate 11-MAR-03
I hereby certify that the within Act originated in and passed the Senate.

Senate 16-JUN-03
I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

McDowell Lee
Secretary

House of Representatives
Passed: 17-APR-03, as amended

House of Representatives

By: Senator Figures

Page 11