

**IS IT WORTH GAMBLING ON CASINO
WORKERS’ SAFETY? GOING ALL-IN ON A
SMOKEFREE WORKPLACE IN
MISSISSIPPI**

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INTRODUCTION	164
I. BACKGROUND	165
<i>A. The Gaming Industry in Mississippi</i>	165
<i>B. Why Gambling and Smoking Go Hand in Hand and Shifting Attitudes Toward Smoking</i>	166
<i>C. Health Concerns for Casino Employees Inhaling Secondhand Smoke</i>	169
II. A SURVEY OF THE CURRENT LEGAL FRAMEWORK	174
<i>A. Some states have no statewide smokefree laws at all</i> ...175	
<i>B. Other states have completely banned smoking in all gaming facilities</i>	175
<i>C. Some states have less than 100% smokefree laws in gaming facilities</i>	177
i. Nevada.....	177
ii. New Jersey.....	177
iii. Pennsylvania.....	179
III. SOLUTIONS FOR MISSISSIPPI.....	180
<i>A. Mississippi cannot leave the decision to go smokefree up to individual casinos</i>	181
<i>B. Municipalities with casinos could implement smoking bans but have been hesitant to do so</i>	182
<i>C. Mississippi should implement a statewide smoking ban</i>	183
CONCLUSION.....	185

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As former Atlantic City mayor and current New Jersey Assemblyman Don Guardian stated, “I don’t want to take away your right to kill yourself by smoking, [but] I do want to take away your right to kill someone else by smoking in a casino.”¹

INTRODUCTION

“No one should be forced to choose between their health and their paycheck,”² but far too often, casino workers are risking their lives to put food on the table. All Mississippians deserve to live, work, and play in smokefree environments, and implementing a law that bans smoking in all workplaces is the most effective way to reduce the death and disease caused by exposure to secondhand smoke. With increased knowledge about the detrimental effects of smoking coming to light in recent decades, Americans continue to push for the right to breathe smokefree air. Many states have implemented “clean indoor air” acts to protect “the public from the irrebuttable harmful effects of secondhand smoke,” but casinos are often exempt from those laws, “blatantly disregarding the health and safety of casino patrons and employees in favor of profits.”³

This Article will explore smoking restrictions in various gaming markets across the United States, by first looking at how tobacco and gambling are intertwined. It will then examine the health concerns associated with smoking and secondhand smoke on casino employees and how the COVID-19 pandemic led American workers to push for clean air legislation. At a time when several states are considering implementing smoking bans, this analysis serves as a means of persuading the Mississippi Legislature to enact a smokefree workplace law that includes casinos.

¹ Wayne Parry, *Dealers with Cancer Beg for Atlantic City Casino Smoking Ban*, ASSOCIATED PRESS (Mar. 9, 2023, 1:56 PM), <https://apnews.com/article/casino-smoking-atlantic-city-gambling> [<https://perma.cc/Y5JN-8HYF>].

² *Rep. Frankel Introduces Legislation to End Indoor Smoking in Casinos and Other Public Spaces*, AM. NONSMOKERS’ RTS. FOUND. (Sept. 15, 2023), <https://no-smoke.org/rep-frankel-introduces-legislation-to-end-indoor-smoking-in-casinos/> [<https://perma.cc/8QFR-DEP6>].

³ Shayna Noyce, *Casino Owners Take Heed: Indoor Smoking Is About to Be Extinguished*, 58 CAL. W. L. REV. 363, 365 (2022).

This Article will balance the economic implications of going smokefree with the casinos' legal obligations to provide workers with safe working conditions.

I. BACKGROUND

A. *The Gaming Industry in Mississippi*

Gaming has been legal in Mississippi since August 1, 1992, when the Isle of Capri in Biloxi opened its doors.⁴ Since the industry's inception, Mississippi has modeled its gaming laws after Nevada.⁵ In the early '90s, the only gaming markets in the United States were Nevada, New Jersey, and Mississippi, and despite a much more saturated market today, Mississippi gaming has remained competitive.⁶ After thirty years of success, Mississippi's Gulf Coast ranks as the fifth-largest gaming market in the United States, and the gaming industry is the fastest growing industry in the state.⁷ Mississippi's major gaming communities include Biloxi, Gulfport, Tunica, Vicksburg, Natchez, and Greenville, with 2022 gaming revenues exceeding \$3 billion.⁸ Additionally, the gaming industry bolsters Mississippi tourism with over fifty percent of Mississippi casino-goers hailing from outside of the state.⁹ Larry Gregory, the Mississippi Gaming and Hospitality Association's Executive Director, summed it up perfectly: "The industry is

⁴ John Surratt, *Mississippi Gaming Revenues Exceed \$3B in 2022: Larry Gregory Speaks to Vicksburg-Warren Chamber of Commerce*, VICKSBURG POST (May 18, 2023, 3:31 PM), <https://www.vicksburgpost.com/2023/05/18/mississippi-gaming-revenues-exceed-3b-in-2022-larry-gregory-speaks-to-vicksburg-warren-chamber-of-commerce/> [https://perma.cc/M7KY-HHBD].

⁵ *Id.*

⁶ Caleb Salers, *Mississippi on Track to Repeat \$3 Billion in Gaming Revenue in 2023*, SUPER TALK MISSISSIPPI MEDIA (June 16, 2023), <https://www.supertalk.fm/mississippi-on-track-to-repeat-3-billion-in-gaming-revenue-in-2023/> [https://perma.cc/PU2S-LV67].

⁷ *Mississippi: A Patchwork of Protections Leaves Thousands Exposed*, AM. NONSMOKERS' RTS. FOUND. (July 2022), <https://smokefreegaps.org/wp-content/uploads/pdf/BridgingtheGap-Mississippi.pdf> [https://perma.cc/2JDB-TY48] [hereinafter *Patchwork of Protections*].

⁸ Surratt, *supra* note 4. This figure includes \$2.5 billion in gross gaming revenue and \$800 million from the hotels and food. *Id.*

⁹ Caleb Salers, *Mississippi Gulf Coast Ranked No. 5 Gaming Market in the Nation*, SUPER TALK MISSISSIPPI MEDIA (Feb. 16, 2023), <https://www.supertalk.fm/mississippi-gulf-coast-ranked-no-5-gaming-market-in-the-nation/> [https://perma.cc/Q276-F5C7].

embedded in local communities, bolstering economic development through job creation, supporting local charities and nonprofits and setting the standard on corporate responsibility.”¹⁰

As of 2023, Mississippi’s casino gaming industry supported approximately 37,000 jobs across its twenty-nine casinos.¹¹ These jobs include dealers, security officers, bartenders, and slot attendants, just to name a few. While each worker has a fundamentally different role, almost every person works in a similar casino environment. That environment, despite casinos supposedly setting standards on corporate responsibility, exposes employees to secondhand smoke, as casino patrons are allowed to smoke inside the casinos. Unfortunately, only a few of the state’s casinos are 100% smokefree, which means that around 30,000 casino employees in Mississippi are exposed to dangerous levels of carcinogens each day on the job.¹²

B. Why Gambling and Smoking Go Hand in Hand and Shifting Attitudes Toward Smoking

Several studies have explored the interplay between gambling and smoking, and they have found that “smoking is a powerful [reinforcement] for the trance-inducing rituals associated with gambling.”¹³ Specifically, the University of Connecticut conducted a study revealing that smokers craved gambling and had lower

¹⁰ Surratt, *supra* note 4.

¹¹ Justin Byers, *The 5 States Where Casino Gaming Supports the Most Jobs*, AT&T, <https://ats.io/casinos/the-5-states-where-casino-gaming-supports-the-most-jobs/> [<https://perma.cc/5S2T-LCBX>] (Aug. 14, 2024). Mississippi ranks third in the United States for the most jobs supported by the gaming industry with 1,268 jobs per 100,000 residents. *Id.*

¹² In 2011, the Palace Casino Resort in Biloxi, Mississippi, was the first casino on the Gulf Coast to ban smoking. Today, it is still the only smokefree casino in Biloxi, but recently, the Island View Casino Resort in Gulfport, Mississippi, built the Beach View, an entirely smokefree facility. See ISLAND VIEW CASINO, <https://islandviewcasino.com/hotels.html> [<https://perma.cc/4XN9-MB5Q>] (last visited July 15, 2024); PALACE CASINO RESORT, <https://www.palacecasinoresort.com/> [<https://perma.cc/4NKC-YWJD>] (last visited July 15, 2024).

¹³ T. Harper, *Smoking and Gambling: A Trance Inducing Ritual*, 12 TOBACCO CONTROL 231, 232 (2003) (alteration in original).

control over gambling.¹⁴ Despite casinos claiming to take gambling prevention seriously, capitalizing on the lack of control possessed by smokers proves otherwise. By allowing smoking on the gaming floor, smokers do not have to take a break from one addiction to partake in another, and thus, the casinos make more money.

Casinos argue that going smokefree means that their profits will drop drastically, but that reasoning is flawed for several reasons. First, casino-goers are more concerned with accessibility than being able to smoke.¹⁵ For example, Illinois casinos lost revenue when they went smokefree while casinos in the neighboring state of Indiana gained revenue.¹⁶ However, when Illinois built a smokefree casino that was within a few miles of the Chicago O'Hare International Airport and easily accessible by the interstate, the Illinois casino, despite being smokefree, began outperforming all of the casinos in Indiana that allowed smoking.¹⁷ Second, if casinos want to attract younger patrons, they must recognize that younger generations are less likely to put themselves in the position of inhaling secondhand smoke.¹⁸ There is a “cultural shift” away from smoking in the United States, as fewer Americans than ever before are smoking cigarettes.¹⁹

Years of research and the coronavirus pandemic significantly impacted this cultural shift.²⁰ Casinos, in particular, saw a temporary, smokefree “new normal” when they reopened after the pandemic. State governments in Pennsylvania, New Jersey, and Michigan implemented temporary smoking bans in casinos as part

¹⁴ 6 NANCY M. PETRY & CHERYL ONCKEN, *CIGARETTE SMOKING IS ASSOCIATED WITH INCREASED SEVERITY OF GAMBLING PROBLEMS IN TREATMENT-SEEKING GAMBLERS* 745-53 (97th ed. 2002).

¹⁵ Daniel J. Munoz, *What's the Potential Economic Impact of a Casino Smoking Ban?*, *NJBIZ* (Mar. 7, 2022), <https://njbiz.com/whats-the-potential-economic-impact-of-a-casino-smoking-ban/> [<https://perma.cc/UU37-DNZZ>].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Richard N. Velotta, *Smoking Ban No Longer a Threat to Casino Revenue, Report Says*, *L.V. REV.-J.* (June 17, 2022, 10:54 AM), <https://www.reviewjournal.com/business/casinos-gaming/smoking-ban-no-longer-a-threat-to-casino-revenue-report-says-2594067/> [<https://perma.cc/2L4Y-V5NP>].

¹⁹ *Id.*

²⁰ See generally Pawel Koczkodaj et al., *The COVID-19 Pandemic and Smoking Cessation—A Real-Time Data Analysis from the Polish National Quitline*, 9 *INTERL J. OF ENVTL. RES. & PUB. HEALTH* 4, 2016. (2022), <https://doi.org/10.3390/ijerph19042016> [<https://perma.cc/3WDM-Y46L>] (last visited Oct. 21, 2024).

of their COVID-19 health and safety guidelines.²¹ Patrons were required to wear masks, and smoke exposure increased the severity of COVID-19 symptoms, which led hundreds of other casinos across the United States to voluntarily implement temporary non-smoking policies.²²

Often, casinos are hesitant to break from the status quo because they are afraid of competition from tribal casinos. Native American tribes largely self-govern, and therefore, they are immune from state laws on their reservations.²³ Many casinos believe that a state law requiring casinos to become smokefree workplaces would lead their patrons to gambling at tribal casinos. Because of their self-governance, tribal casinos historically would not have to follow state smoking bans, still tribes are beginning to shift their casinos' smoking policies as well. For example, the Navajo Nation and the Eastern Band of Cherokee Indians permanently banned smoking in their casinos in 2021.²⁴ In some instances, these nations' smokefree casinos helped contribute to a 15.7% revenue jump in 2022, indicating that smoking inside casinos is no longer the norm.²⁵

The public response to smokefree policies has been relatively positive. In fact, several states set revenue records when they reopened after the pandemic with smoking bans in place.²⁶

²¹ Howard Stutz, *CDC Gaming Reports: Advocacy Group Wants Casinos to Ban Indoor Smoking or Be Exempt from COVID-19 Relief Funds*, AMS. FOR NONSMOKERS' RTS. (Dec. 4, 2020), <https://nonsmokersrights.org/smokefree-casinos> [https://perma.cc/RT5J-EE94].

²² *Reopening Casinos Smokefree; The New Normal*, SMOKE FREE CASINOS, <https://smokefreecasinos.org/reopening-casinos-smokefree-the-new-normal/> [https://perma.cc/2YZJ-W8VG] (last updated Aug. 8, 2022),

²³ See e.g., *Turner v. United States*, 248 U.S. 354, 357 (1919); *Puyallup Tribe v. Department of Game*, 433 U.S. 165, 172 (1977) (discussing Tribes as sovereign authorities).

²⁴ Patricia Nez Henderson & Catherine Saucedo, Opinion, *What Happened When Smoking was Banned in American Indian Casinos*, CNN (Mar. 12, 2022, 2:39 PM), <https://www.cnn.com/2022/03/12/opinions/american-indian-casinos-smoking-ban/index.html> [https://perma.cc/KWX5-W2PW].

²⁵ *Tribal Casinos Set Revenue Record for Second Consecutive Year as 150+ Tribal Casinos Operated Smokefree Indoors*, AM. NONSMOKERS' RTS. FOUND. (July 21, 2023), <https://no-smoke.org/tribal-casinos-set-revenue-record-smokefree/> [https://perma.cc/5VVV-7ELC].

²⁶ *Business Argument Against Smokefree Casinos Falls Apart as Pennsylvania Posts Record Revenue in March*, AMS. FOR NONSMOKERS' RTS. (Apr. 16, 2021), <https://no-smoke.org/business-argument-against-smokefree-casinos-falls-apart-as-pennsylvania-posts-record-revenue-in-march/>.

C3Gaming, a Las Vegas company, issued a report indicating that “people’s gambling habits may be stronger than their smoking habits.”²⁷ Not only did smokefree casinos not lose any market share to nearby smoking casinos, but some smokefree casinos actually saw profits increase due to reduced maintenance costs and more people wanting to avoid secondhand smoke.²⁸

The public is more aware than ever before about “what is transmitted through airways,” and casino workers are capitalizing on the opportunity to end smoking inside casinos while Americans are committed to public health.²⁹ As discussed below, the pandemic has also improved the chances of casino workers being able to recover from injuries caused by secondhand smoke.³⁰

C. Health Concerns for Casino Employees Inhaling Secondhand Smoke

Smoking and the inhalation of secondhand smoke kill nearly a half million people each year, making tobacco use a leading preventable cause of death in the United States.³¹ For many years, Americans have been aware of the detrimental effects of smoking, but more recently, the public has also discovered just how harmful secondhand smoke can be. Secondhand smoke, also referred to as environmental tobacco smoke (“ETS”), is largely “[t]he smoke that comes off the end of a burning cigarette, cigar, or pipe, along with the smoke that is exhaled by the smoker.”³² Since 1964, over 2.5 million nonsmokers have died as a result of inhaling ETS.³³

Much like first-hand smoking, the Environmental Protection Agency has classified secondhand smoke as a Class A carcinogen.³⁴

smoke.org/pennsylvania-gaming-posts-record-revenue-in-march/
[<https://perma.cc/8NLK-YALD>].

²⁷ *A Report on Smoke-Free Casinos*, BOSS MAG., <https://thebossmagazine.com/smoking-bans-no-longer-a-threat-to-casino-revenue/> [<https://perma.cc/46Q2-KFRZ>] (last visited June 26, 2024).

²⁸ *Id.*

²⁹ Noyce, *supra* note 3, at 379-80.

³⁰ *See infra* Section III(c).

³¹ *Patchwork of Protections*, *supra* note 7.

³² Ronald J. Rychlak, *Cards and Dice in Smoky Rooms: Tobacco Bans and Modern Casinos*, 57 *DRAKE L. REV.* 467, 482 (2009).

³³ Noyce, *supra* note 3, at 369.

³⁴ Rychlak, *supra* note 32, at 482-83.

The 1986 U.S. Surgeon General's report concluded that "involuntary smoking is a cause of lung cancer and other diseases in healthy nonsmokers," and "the separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to passive smoke."³⁵ Later, in 2006, the Surgeon General continued the study of the effects of involuntary exposure to tobacco smoke and urged compliance with complete smoking bans.³⁶ The Surgeon General "concluded that there is no risk-free level of ETS exposure" and that the "studies clearly demonstrate that secondhand smoke exposure can be eliminated with a smoking ban."³⁷ The Surgeon General's report also made clear that partial compliance with smoking bans is ineffective, for "incomplete compliance will lead to continued exposure."³⁸

As a result of numerous smokefree initiatives from federal and state governments, and this information being readily available to the public, secondhand smoke exposure dropped drastically from 1990 to 2014.³⁹ As of July 1, 2024, over one thousand municipalities and twenty-eight states require all non-hospitality workplaces, restaurants, and bars to be 100% smokefree.⁴⁰ These local and state laws protect 62.7% of the U.S. population from secondhand smoke.⁴¹ But in many states, gambling facilities are exempt from smokefree legislation, leaving casino employees susceptible to hazardous levels of ETS.⁴²

Gaming in the United States supports nearly 1.8 million jobs and generates \$74 billion in labor income.⁴³ These numbers highlight the "powerful economic engine" of the gaming industry

³⁵ *Id.* at 482 (quoting Bradley M. Soos, Note, *Adding Smoke to the Cloud of Tobacco Litigation - A New Plaintiff: The Involuntary Smoker*, 23 VAL. U. L. REV. 111, 113 (1988)).

³⁶ Rychlak, *supra* note 32, at 483-84.

³⁷ *Id.* at 484.

³⁸ *Id.* at 483-84.

³⁹ Noyce, *supra* note 3, at 370.

⁴⁰ *Overview List - Number of Smokefree and Other Tobacco-Related Laws*, AM. NONSMOKERS' RTS. FOUND. (July 1, 2024), <http://no-smoke.org/wp-content/uploads/pdf/mediaordlist.pdf>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *National Economic Impact of the U.S. Gaming Industry*, AM. GAMING ASS'N (June 1, 2018), <https://www.americangaming.org/resources/economic-impact-of-the-u-s-gaming-industry-2/> [<https://perma.cc/54X4-7S2A>].

and how the gaming industry influences lawmakers.⁴⁴ By the end of 2021, several states allowed some form of legalized commercial gambling (casinos, racinos, and bingo halls), but only twelve of those states required gaming facilities to be 100% smokefree.⁴⁵ In fact, the two biggest gaming states in the nation, Nevada and New Jersey, have smokefree laws that make casinos exempt from the legislation.⁴⁶

When casinos allow smoking, “millions of nonsmoking casino visitors and hundreds of thousands of employees can be involuntarily exposed to secondhand smoke and related toxicants.”⁴⁷ Secondhand smoke exposure puts casino workers at a high risk for lung and heart disease.⁴⁸ In fact, “casino employees represent the occupational group that is at the highest risk of acquiring disease from exposure to secondhand smoke.”⁴⁹ A federal report from the National Institute for Occupational Safety and

⁴⁴ *Id.*

⁴⁵ See *State Tobacco Activities Tracking and Evaluation (STATE) System: STATE System Gaming Facilities Fact Sheet*, CTRS. FOR DISEASE CONTROL & PREVENTION (last visited Jan. 27, 2022), <https://www.cdc.gov/statesystem/factsheets/gaming/Gaming.html> [<https://perma.cc/CY6F-M4KS>] (discussing overall statistics of smoking allowed in gaming facilities); WASH. REV. CODE ANN. § 70.160.030 (West 2005) (“No person may smoke in a public place or in any place of employment.”); COLO. REV. STAT. ANN. § 25-14-205 (West 2007) (repealing Subsection (j), which exempted “the retail floor plan . . . of a licensed casino[.]”); N.D. CENT. CODE ANN. § 23-12-10 (West 2023) (“[S]moking is prohibited in all enclosed areas of: (a) [p]ublic places; and (b) [p]laces of employment.”); S.D. CODIFIED LAWS § 34-46-18 (2023) (permitting smoking in any establishment that “[g]enerates ten percent or more of its annual gross income from the sale of cigars” and “[i]s enclosed by solid walls or windows, a ceiling, and a solid door and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas.”); MINN. STAT. ANN. § 144.4167 (West 2020) (permitting smoking only in scientific studies, traditional Native American ceremonies, private places, tobacco products shops, heavy commercial vehicles, farm vehicles, family farms, the disabled veterans rest camp, and theatrical productions); 410 ILL. COMP. STAT. ANN. 82/35 (West 2024) (permitting smoking in private residences, retail tobacco stores, hotel rooms designated as smoking rooms, enclosed laboratories, etc. but not mentioning casinos); OHIO REV. CODE ANN. § 3794.02(A) (West 2023) (“No proprietor of a public place or place of employment . . . shall permit smoking. . . .”); N.Y. PUB. HEALTH LAW § 1399-o (McKinney 2019); MASS. GEN. LAWS ANN. ch. 270, § 22(b)(2) (West 2023); MD. CODE ANN., HEALTH-GEN. § 24-505 (West 2023); DEL. CODE ANN. tit. 16, § 2904 (2023); FLA. STAT. ANN. § 386.2045 (West 2019).

⁴⁶ NEV. REV. STAT. ANN. § 202.2483(3)(a) (West 2020); N.J. STAT. ANN. § 26:3D-59 (West 2019).

⁴⁷ *Patchwork of Protections*, *supra* note 7.

⁴⁸ *Id.*

⁴⁹ Kevin D. Sherlock, *Clearing the Air: Analyzing the Constitutionality of the Iowa Smokefree Air Act's Gaming-Floor Exemption*, 95 IOWA L. REV. 347, 353 (2009).

Health (“NIOSH”) found that casino workers are exposed to hazardous levels of toxic secondhand smoke at work, including tobacco-specific carcinogens that increased in the body as the shift went on.⁵⁰ Specifically, in Pennsylvania, a study unveiled that Pennsylvania casino workers exposed to ETS were five times more likely to die prematurely than those Pennsylvanians involved in mining disasters.⁵¹ This is a direct result of many states’ gaming-floor exemptions which “affect[] thousands of employees – many of whom are continuously face-to-face with the smoke for hours at a time.”⁵²

In an effort to alleviate the effects of secondhand smoke, many casinos have designated smoking and non-smoking areas and implemented special ventilation systems to filter the toxins out of the air.⁵³ Unfortunately, as explained by the U.S. Surgeon General in 2006, these separation measures are ineffective, for “secondhand smoke and toxic levels of smoke-related pollutants seep into all areas of the casino . . . thereby preventing casino workers any opportunity to isolate themselves from the dangers of smoke during a work shift.”⁵⁴

As casinos reopened during the coronavirus pandemic, several casinos opted to ban smoking in their buildings.⁵⁵ Unfortunately, many of those casinos only intended for the ban to be temporary, and within a year of reopening, they reverted back to their normal smoking practices.⁵⁶ As it stands today, casino workers across the nation are upset with the return to smoking after going smokefree at the height of the pandemic, and several employees have testified before legislatures to urge the passage of smokefree laws.⁵⁷

⁵⁰ Noyce, *supra* note 3, at 371.

⁵¹ *Id.* at 372.

⁵² Sherlock, *supra* note 49, at 362.

⁵³ Noyce, *supra* note 3, at 372.

⁵⁴ *Id.*

⁵⁵ *Id.* at 364 (“[M]ore than 200 casinos across the country reopened with smoke-free policies.”).

⁵⁶ Wayne Parry, *Ban Over, Smokers Lighting Up Again at Atlantic City Casinos*, AP NEWS (July 6, 2021, 3:00 PM) <https://apnews.com/article/nj-state-wire-atlantic-city-coronavirus-pandemic-business-health-59804ae4d3151d97e77ea82d99849714> [<https://perma.cc/LW75-9K7K>].

⁵⁷ Brent Johnson, *Banning Smoking in Atlantic City Casinos Finally Gets Public Hearing Monday After Years of Inaction*, NJ.COM (Feb. 13, 2023, 6:21 PM),

Casino Employees Against Smoking Effects (“CEASE”) stated, “[n]o other group of workers . . . must deal with secondhand smoke like we do – two feet in front of our faces, without even the ability to turn our heads because we’re watching over the chips on the table”⁵⁸

Holly Diebler, an Atlantic City craps dealer, is currently battling throat cancer.⁵⁹ Even though she loves her job, Diebler’s oncologist has advised her that quitting her job is a “life-and-death choice.”⁶⁰ Robin Vitulle, another Atlantic City dealer, asks herself each shift if today is the day she inhales the smoke that gives her cancer, or if it is already too late.⁶¹ Tammy Brady, who has worked as a dealer since she was eighteen, has been in the industry for nearly forty years.⁶² As she battles stage two breast cancer, “[she] can’t help but wonder if it would have happened if the casinos hadn’t forced [her] to work in second-hand smoke”⁶³ A twenty-year Pennsylvania casino employee testified that his asthma symptoms weakened when the Coronavirus pandemic occurred because of the casino’s smoking ban, but his “wheezing and coughing came back when restrictions were lifted and smokers lit up again.”⁶⁴ Countless casino employees share similar experiences of deteriorating health as they wait for state legislatures to act.

<https://www.nj.com/politics/2023/02/banning-smoking-in-atlantic-city-casinos-finally-gets-public-hearing-monday-after-years-of-inaction.html> [<https://perma.cc/8N6B-9QF8>].

⁵⁸ *Id.*

⁵⁹ Parry, *supra* note 1.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Jennifer Borrasso, *Casino Workers Testify to Lawmakers in Push to Ban Smoking on Gaming Floors*, CBS NEWS (Sept. 20, 2023, 6:53 PM), <https://www.cbsnews.com/pittsburgh/news/casino-workers-testify-push-ban-smoking-gaming-floors/> [<https://perma.cc/GD62-YXEE>].

II. A SURVEY OF THE CURRENT LEGAL FRAMEWORK

In the United States, more than half of the states, plus hundreds of cities and counties have implemented comprehensive smokefree laws covering workplaces, restaurants, and bars.⁶⁵ Of the twenty-four states that allow commercial casinos, ten states require casinos to be smokefree.⁶⁶ Several states have passed clean

⁶⁵ See ARIZ. REV. STAT. ANN. § 36-601.01 (2007); CAL. CODE REGS. tit. 8, § 5148 (2007); COLO. REV. STAT. ANN. § 25-14-205 (West 2020); CONN. GEN. STAT. ANN. § 31-40q (West 2022); DEL. CODE ANN. tit. 16, § 2904 (West 2023); HAW. REV. STAT. ANN. § 328J-3 (West 2006); 410 ILL. COMP. STAT. ANN. 82/35 (West 2024); IOWA CODE ANN. § 142D.3 (West 2008); KAN. STAT. ANN. § 21-6110 (West 2015); ME. REV. STAT. ANN. tit. 22, § 1542 (West 2021); MD. CODE ANN., HEALTH-GEN. § 24-505 (West 2023); MASS. GEN. LAWS ANN. ch. 270, § 22(b)(2) (West 2023); MICH. COMP. LAWS ANN. § 333.12603 (West 2010); MINN. STAT. ANN. § 144.414 (West 2019); MONT. CODE ANN. § 50-40-104 (West 2011); NEB. REV. STAT. ANN. § 71-5717 (West 2020); N.J. STAT. ANN. § 26:3D-58 (West 2020); N.M. STAT. ANN. § 24-16-13 (West 2019); N.Y. PUB. HEALTH LAW § 1399-o (McKinney 2019); N.D. CENT. CODE ANN. § 23-12-10 (West 2023); OHIO REV. CODE ANN. § 3794.02 (West 2006); OR. REV. STAT. ANN. § 433.845 (West 2016); 23 R.I. GEN. LAWS ANN. § 23-20.10-3 (West 2004); S.D. CODIFIED LAWS § 34-46-18 (2011); UTAH CODE ANN. 26-38-3(1) (West 2023); VT. STAT. ANN. tit. 18, § 1421 (2016); WASH. REV. CODE ANN. § 70.160.030 (West 2005); WIS. STAT. ANN. § 101.123 (West 2019).

⁶⁶ The 24 states that allow commercial casino gambling include: Arkansas, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Virginia, and West Virginia. Of these states, the 10 that have statewide prohibitions on smoking in casinos include: Colorado, Delaware, Illinois, Maine, Maryland, Massachusetts, Nebraska, New York, Ohio, and South Dakota. See *State of Play*, AM. GAMING ASS'N, <https://www.americangaming.org/state-of-play/> [https://perma.cc/9UX5-G9LW] (last visited July 11, 2024). Note that Oklahoma has not legalized commercial casino gambling in the state, but there are two Oklahoma casinos that are considered commercial casinos because they are owned by Native American tribes but not located on tribal land. Jannelle Stecklein, *Stitt: Commercial Casinos Interested if Deal with Tribes Not Renewed*, THE NORMAN TRANSCRIPT (Dec. 9, 2019), <https://www.normantranscript.com/news/government/stitt-commercial-casinos-interested-if-deal-with-tribes-not-renewed> [https://perma.cc/AQ2J-RJ55]. Florida and New Mexico do not allow commercial gambling in the way that the 24 other states do. Their casinos are largely on tribal land or associated with horse racing. *Gaming Regulations and Statutory Requirements*, AMERICAN GAMING ASSOCIATION, https://www.americangaming.org/wp-content/uploads/2019/07/AGAGamingRegulatoryFactSheet_NewMexico-2022.pdf [https://perma.cc/8PDY-9LFJ] (last visited Oct. 21, 2024); *Gaming Locations*, FLORIDA GAMING CONTROL COMMISSION, <https://flgaming.gov/locations/> [https://perma.cc/ME7E-6968] (last visited Oct. 21, 2024).

air initiatives, but far too many make casinos exempt from that legislation.⁶⁷

A. Some states have no statewide smokefree laws at all.

Mississippi does not have any statewide smokefree legislation, but as of March 2023, there are 183 smokefree municipalities and seven smokefree counties in the State.⁶⁸ Unfortunately, no major gaming municipality has a smokefree law that includes protections for casino workers.⁶⁹ For example, Gulfport's Smoke-Free Air Ordinance prohibits smoking in enclosed public places and places of employment.⁷⁰ However, Section 7-191 of the Ordinance states that casino gaming areas are "not [] subject to and are exempt from the smoking restrictions and prohibitions" of the sections.⁷¹ The absence of a statewide smoking restriction is not solely a Mississippi issue.⁷² States like Kentucky and West Virginia also have no statewide smoking restrictions.⁷³

B. Other states have completely banned smoking in all gaming facilities.

Some of the first states to pass comprehensive smokefree laws were California, Connecticut, Delaware, Maine, and New York. California first passed its statewide ban in 1994, which prohibited smoking in the workplace.⁷⁴ Two years later, California was the first state to eliminate the exemption for bars.⁷⁵ Delaware followed California's lead in 2002, and the following year, Connecticut, New

⁶⁷ *Id.*

⁶⁸ *100% Smoke-free Communities in Mississippi*, MS TOBACCO DATA, <https://msdh.ms.gov/page/resources/19920.pdf> [<https://perma.cc/HV4S-ZJS3>] (Feb. 2024).

⁶⁹ *Patchwork of Protections*, *supra* note 7.

⁷⁰ GULFPORT, MISS., ORD. No. 2579, § 7-187 and § 7-188 (2023).

⁷¹ GULFPORT, MISS., ORD. No. 2579, § 7-191(5) (2023).

⁷² The states with the weakest restrictions are Alaska, Wyoming, Texas, Oklahoma, Missouri, Mississippi, Alabama, Georgia, South Carolina, Kentucky, West Virginia, Virginia, and Pennsylvania. See *Smokefree Air Laws*, AM. LUNG ASS'N, <https://www.lung.org/policy-advocacy/tobacco/smokefree-environments/smokefree-air-laws> [<https://perma.cc/WJ8N-U94E>] (last visited July 11, 2024).

⁷³ *Id.*

⁷⁴ CAL. LAB. CODE § 6404.5 (West 2024).

⁷⁵ *Id.*

York, and Maine also implemented smokefree laws, including nearly all workplaces.⁷⁶ Maine's smokefree law, for example, requires state-regulated gambling facilities opened after July 1, 2003, to be 100% smokefree.⁷⁷

Illinois's comprehensive smoking ban was implemented in 2008, and it prohibited "[s]moking in public places, places of employment, and governmental vehicles."⁷⁸ Notably, legislators did not include casinos in the list of exemptions.⁷⁹ After Illinois casinos experienced a decrease in revenue in 2008, the commercial casino industry pushed back against the Smoke-Free Illinois Act, but researchers have found that the Act did not negatively impact casino revenues.⁸⁰

Dr. John Tauras of the National Bureau of Economic Research and the University of Illinois studied casino admissions ten years prior to the Act and eight years after the Act.⁸¹ He discovered that Illinois casino admissions had dropped consistently since 2000 and that the decrease in 2008 had nothing to do with the smoking ban, but instead with the economic recession and the new availability of video game gambling.⁸² The smoking ban is still in place, yet Illinois remains one of the top gambling markets in the United States, generating approximately \$2 billion annually.⁸³

⁷⁶ CONN. GEN. STAT. ANN. § 31-40q (West 2022); N.Y. PUB. HEALTH LAW § 1399-o (McKinney 2019); ME. REV. STAT. tit. 22, § 1542 (West 2021).

⁷⁷ ME. REV. STAT. tit. 22, § 1542 (West 2021).

⁷⁸ 410 ILL. COMP. STAT. ANN. 82/15 (West 2009).

⁷⁹ 410 ILL. COMP. STAT. ANN. 82/35 (West 2024).

⁸⁰ Carolyn Crist, *Effect of Illinois Smoke-free Law on Casino Revenue is Topic of Dispute*, REUTERS (Jan. 29, 2018, 9:41 AM), <https://www.reuters.com/article/us-health-smoking-casinos/effect-of-illinois-smoke-free-law-on-casino-revenue-is-topic-of-dispute-idUSKBN1FI1YT/> [<https://perma.cc/4K6D-9ZWF>].

⁸¹ *Id.*

⁸² *Id.*

⁸³ *The Top 20 Gambling Markets in the U.S.*, USA TODAY (Apr. 11, 2017, 7:46 AM), <https://www.usatoday.com/picture-gallery/travel/destinations/2017/04/10/the-top-20-gambling-markets-in-the-us/100295670/> [<https://perma.cc/HU4H-KBQ8>].

C. Some states have less than 100% smokefree laws in gaming facilities.

States like Nevada, New Jersey, and Pennsylvania have passed clean air legislation; however, the legislation does not protect casino employees from the effects of secondhand smoke.

i. Nevada

Las Vegas, Nevada, is home to the biggest gambling market in the United States.⁸⁴ Although Nevada voters passed the Nevada Clean Air Act in 2006, the smoking of tobacco products, electronic cigarettes, and vaping products is still allowed in areas of casinos where minors are prohibited from loitering, such as near gaming tables.⁸⁵ In 2020, Park MGM on the Las Vegas Strip became a completely smokefree casino, and several others – including the Mirage, Planet Hollywood, and MGM Grand – now offer non-smoking areas.⁸⁶ Nevada industry members, however, do not believe there is enough local support for the State to implement a ban anytime soon.⁸⁷ Despite the current unforeseeable nature of a smoking ban in Nevada, other states are on their way to paving a new trend for the industry.

ii. New Jersey

New Jersey, home of Atlantic City, generated a gross gaming revenue of over \$5 billion and supported over 50,000 jobs in 2023.⁸⁸ In 2006, the Garden State banned smoking in most public places to guarantee safe workplaces,⁸⁹ but state lawmakers carved out exceptions for “the area within the perimeter of any casino” and

⁸⁴ *Id.*

⁸⁵ NEV. REV. STAT. ANN. § 202.2483(3)(a) (West 2020).

⁸⁶ Jake Hoffman, *Smoke-Free Casinos in Las Vegas - A (Slowly) Growing List*, L.V. THEN & NOW, <https://lasvegasthenandnow.com/smoke-free-casinos-in-las-vegas/> [https://perma.cc/8FD8-WS5E] (last updated Mar. 5, 2024).

⁸⁷ McKenna Ross, *Nevada Casino Smoking Ban Not Likely as Others Consider*, L.V. REV.-J., <https://www.reviewjournal.com/business/casinos-gaming/nevada-casino-smoking-ban-not-likely-as-others-consider-2738852/> [https://perma.cc/97L2-ZPPF] (last updated Mar. 5, 2024).

⁸⁸ *State of Play*, *supra* note 66.

⁸⁹ N.J. STAT. ANN. § 26:3D-58 (West 2006).

“any casino simulcasting facility.”⁹⁰ Unhappy with the exemption, Atlantic City considered passing a local ban that would make the casinos smokefree, but gaming representatives pushed back on the plan.⁹¹ The following year, the city council passed a ban “restricting smoking to no more than twenty-five percent of the casino floor,” but the smoking sections were not separated from the nonsmoking sections, allowing for smoke to travel between sections.⁹² Casino workers, arguing that their “significant health risk[s] because of secondhand smoke . . . should matter more than casinos’ bottom lines,” have spent years seeking to eliminate the exception, but until recently, they have continuously been met with resistance.⁹³ Following COVID-19, the arguments from casino employees became louder because smoking was temporarily banned in Atlantic City casinos for approximately a year amidst the pandemic.⁹⁴ With the increased noise over the last couple of years, discussion from lawmakers has emerged about closing that seventeen-year loophole with Senate Bill 264, which strikes the casino exemption from the New Jersey Smoke-Free Air Act.⁹⁵ The bill is sponsored by “[m]ore than half the members in the state Senate and Assembly – from both political parties”⁹⁶

Additionally, Governor Phil Murphy has stated that if the bill passes the Legislature, he will sign it into law.⁹⁷ Although the Legislature has not held a vote, it has held a “discussion only” hearing to “highlight the issue in a public forum,” which gave the ban more traction than ever before.⁹⁸ Now, casino employees are waiting for the Legislature to act, but there is still a lot of work to be done. The casinos themselves have “remained staunchly opposed, saying the ban could drive gamblers to nearby states . . .

⁹⁰ N.J. STAT. ANN. § 26:3D-59 (West 2006).

⁹¹ Rychlak, *supra* note 32, at 493.

⁹² *Id.*

⁹³ Johnson, *supra* note 57.

⁹⁴ See Brent Johnson, *Push to Ban Smoking in Atlantic City Casinos Gaining Support in N.J. Legislature*, NJ.COM (June 30, 2022, 3:51 PM), <https://www.nj.com/politics/2022/03/push-to-ban-smoking-in-atlantic-city-casinos-gaining-support-in-nj-legislature.html> [<https://perma.cc/F3LS-F44B>].

⁹⁵ S.B. 264, 220th Leg. (N.J. 2022).

⁹⁶ Johnson, *supra* note 57 (discussing S. 264, 220th Leg. (N.J. 2022)).

⁹⁷ *Id.*

⁹⁸ *Id.*

costing thousands of jobs and cutting into profits, including tax revenue that goes to seniors and the disabled in New Jersey.”⁹⁹

New Jersey’s pushback on the smoking ban relied on a situation in 2008 when Atlantic City banned smoking for four weeks and saw a 19.5% decrease in winnings,¹⁰⁰ but years of scientific development, and a new generation largely opposed to smoking, shows the flaws of relying on this 2008 study¹⁰¹. Additionally, casinos in every market struggled in 2008 amidst the national recession, and it is imprudent to blame the decrease in profits on going smokefree.¹⁰² In reference to Senate Bill 264 and its counterpart in the Assembly, New Jersey Senator Joseph Vitale stated, “[i]t’s a long time coming. I know this legislation will eventually pass.”¹⁰³ With the second biggest gambling market in the United States moving towards eliminating smoking, it is only a matter of time until that becomes the new norm. Even with pushback, the reality is that the states surrounding New Jersey are now pushing for the same kind of legislation.

iii. Pennsylvania

Pennsylvania’s Clean Indoor Air Act (“CIAA”) of 2008 banned smoking in public areas and workplaces.¹⁰⁴ Much like the Atlantic City ban, this Act carved out many exceptions, one of which is that state-regulated gaming facilities can allow smoking on twenty-five

⁹⁹ Johnson, *supra* note 94.

¹⁰⁰ *Id.*

¹⁰¹ See *As Smoking Rates Hit Historic Low, Casinos Face Pressure to go Smokefree*, AM. NONSMOKERS’ RTS. FOUND. (Aug. 29, 2024), <https://no-smoke.org/as-smoking-rates-hit-historic-low-casinos-face-pressure-to-go-smokefree/> [<https://perma.cc/C9LS-6C47>] (“Younger generations are increasingly aware of the health risks associated with smoking and inhaling smoke filled air, and now are choosing to avoid it.”).

¹⁰² See Mark P. Legg & Hugo Tang, *Why Casinos are not Recession Proof: An Business Cycle Econometric Case Study of the Las Vegas Region*, SCHOLARWORKS AT UMASS AMHERST (July 1, 2011), [https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1202&context=gradconf_hospitality#:~:text=During%20the%202001%20recession%2C%20the,recession%20\(2007%2F2010\)\[https://perma.cc/HH8Y-NADW\]](https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1202&context=gradconf_hospitality#:~:text=During%20the%202001%20recession%2C%20the,recession%20(2007%2F2010)[https://perma.cc/HH8Y-NADW]).

¹⁰³ Johnson, *supra* note 57.

¹⁰⁴ 35 PA. STAT. AND CONS. STAT. ANN. § 637.3(a) (West 2008) (“[A]n individual may not engage in smoking in a public place.”).

percent of the gaming floor.¹⁰⁵ Additionally, the Act gave casinos the option to increase the percentage of smoking areas up to fifty percent, if they discovered that slot machines in non-smoking areas were not generating as much revenue as slot machines in smoking areas.¹⁰⁶ In 2009, biophysicist James L. Repace conducted a study on Pennsylvania casinos exempt from the smokefree workplace laws.¹⁰⁷ There, Repace found that “secondhand-smoke-induced heart disease and lung cancer would cause an estimated 6 Pennsylvania casino workers’ deaths annually per 10000 at risk.”¹⁰⁸

Recently, Pennsylvania casino employees have pushed back against this exemption.¹⁰⁹ In September 2023, Pennsylvania State Representative Dan Frankel introduced House Bill 1657 seeking to add all workplaces and public spaces to the CIAA and remove the exceptions for bars, casinos, and private clubs.¹¹⁰ On November 15, 2023, the House Committee passed H.B. 1657, moving one step closer to smokefree casinos in Pennsylvania.¹¹¹ Pennsylvania’s commitment to including casinos in their smokefree workplaces ban is important for the health of Pennsylvania residents, and it will urge New Jersey lawmakers to implement their ban as well.

III. SOLUTIONS FOR MISSISSIPPI

In 2006, Mississippi passed its own Clean Indoor Air Act, forbidding smoking in state or local government buildings and in college or university classrooms.¹¹² The law, however, was not comprehensive and did not extend to restaurants, bars, or

¹⁰⁵ 35 PA. STAT. AND CONS. STAT. ANN. § 637.3(b)(11) (West 2008) (The prohibition shall not apply to at least “25% of the gaming floor at a licensed facility.”).

¹⁰⁶ *Id.*

¹⁰⁷ See generally James L. Repace, *Secondhand Smoke in Pennsylvania Casinos: A Study of Nonsmokers’ Exposure, Dose, and Risk*, 99 AM. J. OF PUB. HEALTH (2009).

¹⁰⁸ Sherlock, *supra* note 49, at 353.

¹⁰⁹ Borrasso, *supra* note 64.

¹¹⁰ H.B. 1657, 207th Gen. Assemb. (Pa. 2023).

¹¹¹ Natalie Reid Miller, *Pennsylvania House Committee Passes Bill to Ban Smoking in Casinos, Bars*, WPXI-TV (Nov. 15, 2023, 5:58 AM), <https://www.wpxi.com/news/local/pennsylvania-house-committee-vote-bill-that-would-ban-smoking-casinos-bars/VQW4BQ3FFPGX7CUFJCA3MM5FBU/> [<https://perma.cc/F6R5-NRS8>].

¹¹² MISS. CODE. ANN. § 29-5-161 (2017).

workplaces.¹¹³ More cities across Mississippi push to go smokefree each year, but only about a third of Mississippians are currently protected by comprehensive laws covering public places and workplaces.¹¹⁴ Casinos are some of the largest employers in the state,¹¹⁵ and therefore, far too many Mississippi workers are exposed to secondhand smoke on the job.

The only two potential remedies are either for municipalities with casinos to implement comprehensive smoking bans or for Mississippi to implement a statewide ban that includes casinos. For the reasons set forth below, a statewide smoking ban is Mississippi's best bet.¹¹⁶

A. Mississippi cannot leave the decision to go smokefree up to individual casinos.

Some casinos in Mississippi have implemented smokefree policies, but the majority of them still allow smoking.¹¹⁷ The public's push across the country to make casinos smokefree has been met with great resistance from casinos.¹¹⁸ From a business perspective, gaming facilities want to capitalize on the amount of time they have someone at the slot machine or gaming table.¹¹⁹ Therefore, if casinos allow patrons to smoke inside the premises, patrons are not required to stop playing the casino game, which in essence generates more money for the establishment. Despite recent studies indicating that the majority of casino patrons prefer to be in smokefree environments and that going smokefree does not negatively impact casino revenue, casinos rely on their outdated business arguments and are too afraid to change the way they have operated since their inception.¹²⁰

¹¹³ *Id.*

¹¹⁴ *Patchwork of Protections*, *supra* note 7.

¹¹⁵ Byers, *supra* note 11.

¹¹⁶ *See infra* Section III(c).

¹¹⁷ *Patchwork of Protections*, *supra* note 7.

¹¹⁸ Tracey Tully, *Smoking and Gambling Go 'Hand in Hand.' But Maybe Not for Long*, N.Y. TIMES (Nov. 6, 2022), <https://www.nytimes.com/2022/11/06/nyregion/atlantic-city-casinos-smoking.html> [<https://perma.cc/X56N-X49Y>].

¹¹⁹ *Id.*

¹²⁰ Michael A. Tynan et al., *Attitudes Toward Smoke-Free Casino Policies Among US Adults*, 2017, NAT'L LIBR. OF MED. (Mar. 21, 2019),

Therefore, the only way for Mississippi to protect its three million residents and millions of annual tourists is to implement a statewide comprehensive smokefree law that includes restaurants, bars, and casinos.

B. Municipalities with casinos could implement smoking bans but have been hesitant to do so.

Mississippi's Clean Indoor Air Act specifically notes that municipalities and counties are free to adopt "additional ordinances with regard to the use of smoking in public places."¹²¹ This provision has led multiple cities to enact smokefree ordinances.¹²² The various ordinances prohibit smoking in public places and places of employment, but many set forth exemptions for private residences not used for child care, private clubs, retail tobacco stores, and cigar bars.¹²³ Brookhaven's ordinance is especially noteworthy because it specifically prohibits smoking in "gambling facilities."¹²⁴

Unfortunately, major Mississippi gaming communities like Biloxi and Tunica have not adopted such laws. In 2012, Biloxi Councilwoman Lucy Denton proposed a smoking ban in most indoor public places in the City.¹²⁵ Her proposal included an exemption for casinos, but many business owners complained that permitting

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6505333/> [https://perma.cc/K3FL-WWGQ]; *As More and More Casinos Go Smokefree, Advocates Release Tool to Help Gaming Companies Accurately Assess Customer Preferences*, AM. NONSMOKERS' RTS. FOUND. (Mar. 23, 2021), <https://no-smoke.org/new-player-survey-help-casinos-gauge-smoking-preferences> [https://perma.cc/M37L-7KAV]; *New Poll: 74% More Likely to Visit Atlantic City Casinos If They Are Smoke-free*, AM. CANCER SOC'Y (Dec. 13, 2023), <https://www.fightcancer.org/releases/new-poll-74-more-likely-visit-atlantic-city-casinos-if-they-are-smoke-free-0> [https://perma.cc/J8GF-BXEE].

¹²¹ MISS. CODE. ANN. § 29-5-163 (2006).

¹²² See, e.g., BROOKHAVEN, MISS., ORD. NO. 234, § 32-83 (2019); SOUTHAVEN, MISS., tit. X, ch.3., § 10-203 (2014); PICAYUNE, MISS., ORD. NO. 914, § 58-72 (2014); HERNANDO, MISS., ch. 22, art. IV, § 22-73 (2007); STARKVILLE, MISS., ORD. 2020-06, § 12.5 (2020).

¹²³ See, e.g., BROOKHAVEN, MISS., ORD. NO. 234, § 32-83 (2019); SOUTHAVEN, MISS., tit. X, ch.3., § 10-203 (2014); PICAYUNE, MISS., ORD. NO. 914, § 58-72 (2014); HERNANDO, MISS., ch. 22, art. IV, § 22-73 (2007); STARKVILLE, MISS., ORD. 2020-06, § 12.5 (2020).

¹²⁴ BROOKHAVEN, MISS., ORD. NO. 234, § 32-83 (2019) ("Smoking shall be prohibited in all enclosed public places within the City of Brookhaven, including but not limited to . . . [g]ambling facilities.")

¹²⁵ *Debate Heats Up Over Biloxi Smoking Ban Ordinance*, WLOX (Feb. 7, 2012, 5:23 PM), <https://www.wlox.com/story/16695899/public-smoking-ban-proposed-in-biloxi> [https://perma.cc/YS7V-TF2T] [hereinafter *Biloxi Smoking Ban Ordinance*].

smoking in casinos while forbidding it in other businesses was unfair.¹²⁶ This bill was heavily debated during council meetings with much pushback from local casinos.¹²⁷ Still today, Biloxi has not implemented a smoking ban of any kind, and considering these localities have had the option to pass smoking bans for nearly two decades and have failed to do so, a statewide smoking ban is the only solution.

C. Mississippi should implement a statewide smoking ban.

Mississippi is lagging far behind most other states in the country in smokefree protections for public places and places of employment. Despite Mississippi having such a large gaming market historically intertwined with tobacco smoking, most other gaming markets in the United States have already implemented some sort of statewide smoking ban. Additionally, many legislatures in the states that exempt casinos from their smoking bans are currently in the process of removing those exemptions. Mississippi should not only pass a smoking ban, but it should pass a ban without any exemption for casinos, in an effort to keep up with the ongoing trend. Further, it would benefit Mississippi lawmakers to implement a full smoking ban, now, instead of waiting to modify a piece of legislation later, since Americans have become more intolerant of breathing in secondhand smoke.

The idea of implementing a comprehensive smoking ban is not new to Mississippi.¹²⁸ In fact, Mississippi Representative Bryant Clark has proposed a Mississippi Smoke-Free Air Act for several years in a row, only for the bills to die in committee each year.¹²⁹ Clark's proposed bills are extremely comprehensive and only offer exemptions for private residences that are not used as care facilities.¹³⁰

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *See, e.g.*, H.B. 107, 2023 Regular Sess. (Miss. 2023); H.B. 245, 2021 Regular Sess. (Miss. 2021); H.B. 142, 2018 Regular Sess. (Miss. 2018); H.B. 739, 2014 Regular Sess. (Miss. 2014).

¹²⁹ *Id.*

¹³⁰ *See* H.B. 107, 2023 Regular Sess. (Miss. 2023); H.B. 245, 2021 Regular Sess. (Miss. 2021); H.B. 142, 2018 Regular Sess. (Miss. 2018); H.B. 739, 2014 Regular Sess. (Miss. 2014).

While prohibiting smoking in gaming facilities is essential to the wellbeing of Mississippians, some other exemptions are likely necessary in order for the bill to gain traction and protect businesses whose business models revolve around smoking. A cigar lounge's entire business model, for example, depends on people being able to smoke inside. Nearly everyone who goes to a cigar lounge intends to smoke, while nearly everyone who goes to a casino intends to gamble. A casino's fundamental business operations do not depend on the sale of cigarettes, and therefore, they should not be protected from legislation just because gambling and smoking were historically intertwined. Bars are similar to casinos in the sense that they are part of the vice industry and that people often smoke when they drink. However, it is commonplace for bars, even in Mississippi, to prohibit smoking inside, and despite the prohibition, patrons still frequent these establishments.¹³¹ Removing inside smoking does not impact bars' business revenues because their fundamental business model is selling alcohol, much like a casino's fundamental business model is selling bets.

Therefore, Mississippi legislators should model the State's smokefree air act after the proposed legislation in New Jersey.¹³² The smoking ban should prohibit smoking in public places and workplaces, but it should not apply to cigar lounges, tobacco retail establishments, private residences, or research laboratories used to study the health effects of smoking.¹³³ A statewide smoking ban applied across the board to places that do not depend on smoking for the majority of their business would eliminate the fairness arguments posed by Biloxi businesses in 2012.¹³⁴ Further, an act such as this would eliminate smoking in nearly every Mississippian's workplace and, thus, reduce health risks and healthcare costs.

Casinos view statewide smoking bans as something that could negatively impact profits, but a ban could potentially protect

¹³¹ MINN. HOUSE OF REPRESENTATIVES, REV. OF ECON. STUD. ON SMOKING BANS IN BARS AND RESTAURANTS (Mar. 2006) <https://www.house.mn.gov/hrd/pubs/smokeban.pdf> [<https://perma.cc/7CCA-UKYP>] ("no net loss and sometimes net increases in bar or restaurant sales after smoking bans went into effect").

¹³² See S. 264, 220th Leg. (N.J. 2022).

¹³³ *Id.*

¹³⁴ *Biloxi Smoking Ban Ordinance*, *supra* note 125.

casinos from significant payouts to injured casino workers in the future.¹³⁵ This Article will not explore casinos' potential future liabilities in depth, but some believe that courts will come to view secondhand smoke exposure as a toxic tort, much like asbestos exposure.¹³⁶ The Occupational Safety and Health Administration ("OSHA") does not currently provide protections for workers against secondhand smoke, but future tort recovery is plausible, especially considering increased concern over air quality stemming from the COVID-19 pandemic.¹³⁷

Some lawyers also anticipate secondhand smoke being categorized as an occupational disease, which would allow casino workers to recover under workers' compensation laws.¹³⁸ Much like with toxic torts, there is currently no means of recovery for an employers' failure to provide a safe, smokefree workplace.¹³⁹ Some states, however, have considered COVID-19 – something entirely unrelated to a workplace hazard – as an occupational disease, so it is not unforeseeable that secondhand smoke could be categorized as one as well.¹⁴⁰ Unfortunately, a smoking ban would not protect casinos from employees who were injured in the past, but it would prevent any future harm.

CONCLUSION

Implementing a comprehensive smoking ban that includes casinos would be a jackpot for Mississippi, because casinos that allow smoking have gambled with their employees' health for decades. Non-smoking areas do not protect workers from the dangers of secondhand smoke, and even if they did, it is unlikely that casinos would be able to accommodate all workers who wish to not be exposed to the hazards. Those in favor of smoking in casinos argue that employees have a choice of where to work and assume the risk by choosing to work in a casino. One of the major benefits of having casinos in Mississippi is to create jobs for its residents.

¹³⁵ Noyce, *supra* note 3, at 379-82.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at 379.

¹⁴⁰ *Id.* at 380.

Because casinos are some of the largest employers in the state, disingenuously arguing that these workers have a choice of where to work completely defeats one of the main reasons for bringing the gaming industry to Mississippi.

Casinos also argue that a smoking ban would negatively impact their revenues, but they neglect the multitude of outside factors that impact their bottom lines. Inflation, recession, and increased competition are just a few factors that impact casino revenue, but no study has definitively proved that smoking bans would harm casinos financially. The one thing that is certain, though, is that secondhand smoke in casinos is prematurely killing thousands of casino workers across the country.

Further, more people want to go to smokefree in casinos each year, and as casinos struggle to stay relevant among younger generations, smokefree policies might help encourage younger people – who grew up learning about the detrimental effects of smoking – to spend more time in casinos. It is time for the Mississippi legislature to step in and follow the lead of various other jurisdictions across the nation by implementing a statewide smoking ban that would protect all Mississippi workers.