

## SENATE SUBSTITUTE TO HB 1138:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
2 offenses against public health and morals, so as to provide for the crime of smoking in a  
3 motor vehicle on a state highway, county road, or municipal street or on private property  
4 while a child is restrained in a child passenger restraining system; to enact the "Georgia  
5 Smokefree Air Act of 2004"; to prohibit smoking in certain facilities and areas; to state  
6 findings; to provide for definitions; to provide for exceptions; to provide for posting of signs;  
7 to provide for violations, penalties, and state and local government enforcement and  
8 administration; to provide for construction; to provide that this prohibition shall be  
9 cumulative to other general or local acts, rules, and regulations; to repeal a former prohibition  
10 against smoking in public places; to provide for related matters; to repeal conflicting laws;  
11 and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**PART I**  
**SECTION 1.**

15 Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to general  
16 provisions for offenses against public health and morals, is amended by adding a new Code  
17 Section 16-12-2.1 to follow Code Section 16-12-2, relating to smoking in public places, to  
18 read as follows:

19 "16-12-2.1.

20 (a) It shall be unlawful for any person to smoke tobacco in any form in the presence of a  
21 child who is in a child passenger restraining system in a passenger automobile, van, or  
22 pickup truck on a state highway, county road, or municipal street or on private property if  
23 the windows are closed preventing ventilation.

24 (b) A person who violates subsection (a) of this Code section may be fined no more than  
25 \$15.00; provided, however, the provisions of Chapter 11 of Title 17 and any other  
26 provision of law to the contrary notwithstanding, the costs of such prosecution shall not be

1 taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be  
2 assessed against a person for conviction thereof."

3 **PART II**

4 **SECTION 2.**

5 This part shall be known and may be cited as the "Georgia Smokefree Air Act of 2004."

6 **SECTION 3.**

7 Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against  
8 public health and morals, is amended by adding a new Article 8 to read as follows:

9 "ARTICLE 8

10 16-12-180.

11 The General Assembly finds that:

12 (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air  
13 pollution, and that breathing secondhand smoke (also known as environmental tobacco  
14 smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke,  
15 respiratory disease, and lung cancer. The National Cancer Institute determined in 1999  
16 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans  
17 annually;

18 (2) The Public Health Service's National Toxicology Program has listed secondhand  
19 smoke as a known carcinogen;

20 (3) Secondhand smoke is particularly hazardous to elderly people, individuals with  
21 cardiovascular disease, and individuals with impaired respiratory function, including  
22 asthmatics and those with obstructive airway disease. Children exposed to secondhand  
23 smoke have an increased risk of asthma, respiratory infections, sudden infant death  
24 syndrome, developmental abnormalities, and cancer;

25 (4) The federal Americans with Disabilities Act of 1990, which requires that disabled  
26 persons have access to public places and workplaces, deems impaired respiratory function  
27 to be a disability;

28 (5) The U.S. Surgeon General has determined that the simple separation of smokers and  
29 nonsmokers within the same air space may reduce, but does not eliminate, the exposure  
30 of nonsmokers to secondhand smoke. The Environmental Protection Agency has  
31 determined that secondhand smoke cannot be reduced to safe levels in businesses by high

1 rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter  
2 and odors in smoke, do not eliminate the known toxins in secondhand smoke;

3 (6) A significant amount of secondhand smoke exposure occurs in the workplace.  
4 Employees who work in smoke-filled businesses suffer a 25-50 percent higher risk of  
5 heart attack and higher rates of death from cardiovascular disease and cancer, as well as  
6 increased acute respiratory disease and measurable decrease in lung function;

7 (7) Smoke-filled workplaces result in higher worker absenteeism due to respiratory  
8 disease, lower productivity, higher cleaning and maintenance costs, increased health  
9 insurance rates, and increased liability claims for diseases related to exposure to  
10 secondhand smoke;

11 (8) Numerous economic analyses examining restaurant and hotel receipts and controlling  
12 for economic variables have shown either no difference or a positive economic impact  
13 after enactment of laws requiring workplaces to be smokefree. Creation of smokefree  
14 workplaces is sound economic policy and provides the maximum level of employee  
15 health and safety;

16 (9) Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on  
17 merchandise and fixtures causes economic damage to businesses; and

18 (10) The purposes of this article are (A) to protect the public health and welfare by  
19 prohibiting smoking in public places and places of employment; and (B) to guarantee the  
20 right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe  
21 smokefree air shall have priority over the desire to smoke.

22 16-12-181.

23 As used in this article, the term:

24 (1) 'Bar' means an establishment that is devoted to the serving of alcoholic beverages for  
25 consumption by guests on the premises and in which the serving of food is only  
26 incidental to the consumption of those beverages, including, but not limited to, taverns,  
27 nightclubs, cocktail lounges, and cabarets.

28 (2) 'Business' means a sole proprietorship, partnership, joint venture, corporation, or  
29 other business entity formed for profit-making purposes, including retail establishments  
30 where goods or services are sold as well as professional corporations and other entities  
31 where legal, medical, dental, engineering, architectural, or other professional services are  
32 delivered.

33 (3) 'Employee' means a person who is employed by an employer in consideration for  
34 direct or indirect monetary wages or profit, and a person who volunteers his or her  
35 services for a nonprofit entity.

1 (4) 'Employer' means a person, business, partnership, association, corporation, including  
2 a trust or nonprofit entity, that employs the services of one or more individuals.

3 (5) 'Enclosed area' means all space between a floor and ceiling that is enclosed on all  
4 sides by solid walls or windows, exclusive of doorways, which extend from the floor to  
5 the ceiling.

6 (6) 'Health care facility' means an office or institution providing care or treatment of  
7 diseases, whether physical, mental, or emotional, or other medical, physiological, or  
8 psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals  
9 or other clinics, including weight control clinics, nursing homes, homes for the aging or  
10 chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists,  
11 physicians, dentists, and all specialists within these professions. This definition shall  
12 include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within  
13 health care facilities.

14 (6.1) 'Local governing authority' means a county or municipal corporation of this state.

15 (7) 'Place of employment' means an area under the control of a public or private  
16 employer that employees normally frequent during the course of employment, including,  
17 but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting  
18 rooms, classrooms, employee cafeterias, and hallways. A private residence is not a place  
19 of employment unless it is used as a child care, adult day-care, or health care facility.

20 (8) 'Public place' means an enclosed area to which the public is invited or in which the  
21 public is permitted, including, but not limited to, banks, bars, educational facilities, health  
22 care facilities, laundromats, public transportation facilities, reception areas, restaurants,  
23 retail food production and marketing establishments, retail service establishments, retail  
24 stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence  
25 is not a public place unless it is used as a child care, adult day-care, or health care  
26 facility.

27 (9) 'Restaurant' means an eating establishment, including, but not limited to, coffee  
28 shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives  
29 or offers for sale food to the public, guests, or employees, as well as kitchens and catering  
30 facilities in which food is prepared on the premises for serving elsewhere. The term  
31 shall include a bar area within the restaurant.

32 (10) 'Retail tobacco store' means a retail store utilized primarily for the sale of tobacco  
33 products and accessories and in which the sale of other products is merely incidental.

34 (11) 'Service line' means an indoor line in which one or more persons are waiting for or  
35 receiving service of any kind, whether or not the service involves the exchange of money.

36 (12) 'Shopping mall' means an enclosed public walkway or hall area that serves to  
37 connect retail or professional establishments.

1 (13) 'Smoking' means inhaling, exhaling, burning, or carrying any lighted cigar,  
2 cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

3 (14) 'Sports arena' means sports pavilions, stadiums, gymnasiums, health spas, boxing  
4 arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places  
5 where members of the general public assemble to engage in physical exercise, participate  
6 in athletic competition, or witness sports or other events.

7 (15) 'Stand-alone bar' means any licensed premises devoted during any time of operation  
8 predominantly or totally to serving alcoholic beverages, intoxicating beverages, or  
9 intoxicating liquors, or any combination thereof, for consumption on the licensed  
10 premises, including, but not limited to, taverns, cigar bars, nightclubs, cocktail lounges,  
11 and cabarets, in which the serving of food, if any, is merely incidental to the consumption  
12 of any such beverage and the licensed premises is not located within, and does not share  
13 any common entryway or common indoor area with, any other enclosed indoor  
14 restaurant, including any business for which the sale of food or any other product or  
15 service is more than an incidental source of gross revenue. A place of business constitutes  
16 a stand-alone bar in which the service of food is merely incidental in accordance with this  
17 paragraph if the licensed premises derives no more than 20 percent of its gross revenue  
18 from the sale of food consumed on the licensed premises.

19 16-12-182.

20 All enclosed facilities of, including buildings and vehicles owned, leased, or operated by,  
21 the State of Georgia, its agencies and authorities, and any political subdivision of this state,  
22 including a county, a municipal corporation, or a local board or authority created by  
23 general, local, or special Act of the General Assembly, or by ordinance or resolution of the  
24 governing body of a county or municipal corporation individually or jointly with other  
25 political subdivisions of this state shall be subject to this article.

26 16-12-183.

27 Smoking shall be prohibited in all enclosed public places in this state, including, but not  
28 limited to, the following places:

29 (1) Aquariums, galleries, libraries, and museums;

30 (2) Areas available to and customarily used by the general public in businesses and  
31 nonprofit entities patronized by the public, including, but not limited to, professional  
32 offices, banks, laundromats, hotels, and motels;

33 (3) Bars, but which shall not include stand-alone bars;

34 (4) Bingo facilities when a bingo game is in progress;

35 (5) Convention facilities;

- 1 (6) Elevators;
- 2 (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture,
- 3 musical recital, or other similar performance;
- 4 (8) Health care facilities;
- 5 (9) Licensed child care and adult day-care facilities;
- 6 (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums,
- 7 trailer parks, retirement facilities, nursing homes, and other multiple-unit residential
- 8 facilities;
- 9 (11) Polling places;
- 10 (12) Public transportation facilities, including buses and taxicabs, and ticket, boarding,
- 11 and waiting areas of public transit depots;
- 12 (13) Restaurants;
- 13 (14) Restrooms, lobbies, reception areas, hallways, and other common use areas;
- 14 (15) Retail stores;
- 15 (16) Rooms, chambers, and places of meeting or public assembly when a public meeting
- 16 is in progress;
- 17 (17) Service lines;
- 18 (18) Shopping malls; and
- 19 (19) Sports arenas, including enclosed places in outdoor arenas.

20

21 16-12-184.

22 (a) Except as provided for in subsection (c) of this Code section, smoking shall be  
 23 prohibited in all enclosed facilities within places of employment, including, but not limited  
 24 to, common work areas, auditoriums, classrooms, conference and meeting rooms, private  
 25 offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs,  
 26 restrooms, and all other enclosed facilities.

27 (b) Such prohibition on smoking shall be communicated to all existing employees by July  
 28 1, 2004, and to all prospective employees upon their application for employment.

29 (c) This Code section shall not apply to private places of employment that have fewer than  
 30 seven employees, except that smoking shall be prohibited in any public reception area of  
 31 such place of employment. This exception shall not apply to restaurants.

32

33 16-12-185.

34 Notwithstanding any other provision of this article, the following areas shall be exempt  
 35 from the provisions of Code Sections 16-12-183 and 16-12-184:

- 36 (1) Private residences, except when used as a licensed child care, adult day-care, or
- 37 health care facility;

1 (2) Hotel and motel rooms that are rented to guests and are designated as smoking  
2 rooms; provided, however, that not more than 20 percent of rooms rented to guests in a  
3 hotel or motel may be so designated;

4 (3) Retail tobacco stores, provided that smoke from such stores does not infiltrate into  
5 areas where smoking is prohibited under the provisions of this article;

6 (4) Designated areas of nursing homes and long-term care facilities if such designated  
7 areas meet local, state, and federal requirements. Bedridden patients in a nursing home  
8 or long-term care facility may smoke only under direct supervision of another person  
9 designated or approved by the administration of the nursing home or facility;

10 (4.1) Private and semiprivate rooms in hospitals that are occupied by one or more  
11 persons, all of whom have written authorization from a physician;

12 (5) Outdoor areas of places of employment;

13 (6) Any automobile or vehicle;

14 (7) Stand-alone bars;

15 (8) Smoking areas in airports, as such areas are designated by the airport operator, if such  
16 area is equipped with a ventilation system that exhausts tobacco smoke away from air  
17 intake ducts and is maintained under negative pressure with respect to surrounding areas  
18 sufficient to contain tobacco smoke within the smoking area; and

19 (9) Tobacco storage facilities and facilities of any leaf tobacco dealer, processor,  
20 manufacturer, distributor, importer, exporter, or wholesaler and any corporate office of  
21 such dealer, processor, manufacturer, distributor, importer, exporter, or wholesaler.

22 16-12-186.

23 Notwithstanding any other provision of this article, an owner, operator, manager, or other  
24 person in control of an establishment, facility, or outdoor area may declare that entire  
25 establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited  
26 in any place in which a sign conforming to the requirements of subsection (a) of Code  
27 Section 16-12-187 is posted.

28 16-12-187.

29 (a) 'No Smoking' signs or the international 'No Smoking' symbol consisting of a pictorial  
30 representation of a burning cigarette enclosed in a red circle with a red bar across it shall  
31 be clearly and conspicuously posted by the owner, operator, manager, or other person in  
32 control in every public place and place of employment where smoking is prohibited by this  
33 article.

1 (b) All ashtrays and other smoking paraphernalia shall be removed by the owner, operator,  
2 manager, or other person in control from any area where smoking is prohibited by this  
3 article.

4 16-12-188.

5 No person or employer shall discharge, refuse to hire, or in any manner retaliate against an  
6 employee, applicant for employment, or customer because that employee, applicant, or  
7 customer exercises any rights afforded by this article or attempts to prosecute a violation  
8 of this article.

9  
10 16-12-189.

11 (a) This article shall be enforced by the appropriate local agency or agencies designated  
12 by each local governing authority in this state.

13 (b) Each local governing authority in this state that issues occupation tax certificates shall  
14 give notice of the provisions of this article to all recipients of occupation tax certificates.

15 (c) Any citizen who desires to register a complaint under this article may initiate  
16 enforcement with the agency designated by a local governing authority for enforcement.

17 (d) The health department and fire department of any local governing authority shall, while  
18 an establishment is undergoing otherwise mandated inspections, inspect for compliance  
19 with this article.

20 (e) An owner, manager, operator, or employee of an establishment regulated by this article  
21 shall inform persons violating this article of the appropriate provisions of this article.

22 (f) Any employee or private citizen may bring a legal action to enforce this article.

23 (g) In addition to any other remedy provided by law, a local governing authority or any  
24 person aggrieved by the failure of the owner, operator, or other person in control of a  
25 public place or place of employment to comply with the provisions of this article may  
26 apply for injunctive relief to enforce those provisions in any court of competent  
27 jurisdiction.

28 16-12-190.

29 (a) A person who smokes tobacco in any form in an area where smoking is prohibited by  
30 the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall  
31 be punished by a fine of not less than \$50.00 nor more than \$100.00.

32 (b) A person who owns, manages, operates, or otherwise controls a public place or place  
33 of employment and who fails to comply with the provisions of this article shall be guilty  
34 of a misdemeanor and, upon conviction, shall be punished as follows:

35 (1) For a first violation, a fine not exceeding \$100.00;

1 (2) For a second violation within one year, a fine not exceeding \$200.00; and

2 (3) For each additional violation within one year, a fine not exceeding \$500.00.

3 (c) A person who owns, manages, operates, or otherwise controls a public place or place  
4 of employment shall have no civil or criminal liability under this article when such person  
5 has complied with the duty to post the premises as required by subsection (a) of Code  
6 Section 16-12-187, the duty to remove ashtrays and other smoking paraphernalia as  
7 required by subsection (b) of Code Section 16-12-188, and the duty to inform violators of  
8 the provisions of this article as required by subsection (e) of Code Section 16-12-189;  
9 provided, however, that this exemption from liability shall not apply with respect to  
10 wrongful discharge, refusal to hire, or retaliation which is prohibited by Code Section  
11 16-12-188.

12 (d) In addition to the fines established by this Code section, violation of this article by a  
13 person who owns, manages, operates, or otherwise controls a public place or place of  
14 employment may result in the suspension or revocation of any permit or license issued to  
15 the person for the premises on which the violation occurred.

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

18 16-12-191.

19 The Department of Community Health and the agency designated by each unit of local  
20 government in this state shall engage in a continuing program to explain and clarify the  
21 purposes and requirements of this article to citizens affected by it and to guide owners,  
22 operators, and managers in their compliance with it. The program may include publication  
23 of a brochure for affected businesses and individuals explaining the provisions of this  
24 article.

25 16-12-192.

26 The agency designated by each unit of local government in this state shall annually request  
27 other governmental and educational agencies having facilities within the area of the local  
28 government to establish local operating procedures in cooperation and compliance with this  
29 article.

30 16-12-193.

31 This article shall not be construed to permit smoking where it is otherwise restricted by  
32 other applicable laws.

1 16-12-194.

2 This article shall be cumulative to and shall not prohibit the enactment of any other general  
3 or local laws, rules, and regulations of state or local governing authorities or local  
4 ordinances prohibiting smoking which are more restrictive than this article or which are not  
5 in direct conflict with this article.

6 16-12-195.

7 This article shall be liberally construed so as to further its purposes."

8 **SECTION 4.**

9 Said chapter is further amended by repealing Code Section 16-12-2, relating to prohibited  
10 smoking in public places. This repeal shall not, however, abate the prosecution of any  
11 offense committed prior to July 1, 2004.

12 **PART III**

13 **SECTION 5.**

14 All laws and parts of laws in conflict with this Act are repealed.