

Senate Bill 90

By: Senators Thomas of the 54th, Reed of the 35th, Unterman of the 45th, Schaefer of the 50th, Miles of the 43rd and others

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 enact the "Georgia Smokefree Air Act of
3 2005"; to prohibit smoking in certain facilities and areas; to state findings; to provide for
4 definitions; to provide for exceptions; to provide for posting of signs; to provide for
5 violations, penalties, and state and local government enforcement and administration; to
6 provide for construction; to provide that this prohibition shall be cumulative to other general
7 or local acts, rules, and regulations; to repeal a former prohibition against smoking in public
8 places; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 This Act shall be known and may be cited as the "Georgia Smokefree Air Act of 2005."

12 **SECTION 2.**

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

15 "ARTICLE 8

16 16-12-180.

17 The General Assembly finds that:

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

- 1 (2) The Public Health Service's National Toxicology Program has listed secondhand
2 smoke as a known carcinogen;
- 3 (3) Secondhand smoke is particularly hazardous to elderly people, individuals with
4 cardiovascular disease, and individuals with impaired respiratory function, including
5 asthmatics and those with obstructive airway disease. Children exposed to secondhand
6 smoke have an increased risk of asthma, respiratory infections, sudden infant death
7 syndrome, developmental abnormalities, and cancer;
- 8 (4) The federal Americans with Disabilities Act of 1990, which requires that disabled
9 persons have access to public places and workplaces, deems impaired respiratory function
10 to be a disability;
- 11 (5) The U.S. Surgeon General has determined that the simple separation of smokers and
12 nonsmokers within the same air space may reduce, but does not eliminate, the exposure
13 of nonsmokers to secondhand smoke. The Environmental Protection Agency has
14 determined that secondhand smoke cannot be reduced to safe levels in businesses by high
15 rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter
16 and odors in smoke, do not eliminate the known toxins in secondhand smoke;
- 17 (6) A significant amount of secondhand smoke exposure occurs in the workplace.
18 Employees who work in smoke-filled businesses suffer a 25-50 percent higher risk of
19 heart attack and higher rates of death from cardiovascular disease and cancer, as well as
20 increased acute respiratory disease and measurable decrease in lung function;
- 21 (7) Smoke-filled workplaces result in higher worker absenteeism due to respiratory
22 disease, lower productivity, higher cleaning and maintenance costs, increased health
23 insurance rates, and increased liability claims for diseases related to exposure to
24 secondhand smoke;
- 25 (8) Numerous economic analyses examining restaurant and hotel receipts and controlling
26 for economic variables have shown either no difference or a positive economic impact
27 after enactment of laws requiring workplaces to be smokefree. Creation of smokefree
28 workplaces is sound economic policy and provides the maximum level of employee
29 health and safety;
- 30 (9) Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on
31 merchandise and fixtures causes economic damage to businesses; and
- 32 (10) The purposes of this article are (A) to protect the public health and welfare by
33 prohibiting smoking in public places and places of employment; and (B) to guarantee the
34 right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe
35 smokefree air shall have priority over the desire to smoke.

1 16-12-181.

2 As used in this article, the term:

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

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

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

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

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

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

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

34 (8) 'Public place' means an enclosed area to which the public is invited or in which the
35 public is permitted, including, but not limited to, banks, bars, educational facilities, health
36 care facilities, laundromats, public transportation facilities, reception areas, restaurants,
37 retail food production and marketing establishments, retail service establishments, retail

1 stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence
2 is not a public place unless it is used as a child care, adult day-care, or health care
3 facility.

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

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

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

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

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

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

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

33 16-12-182.

34 All enclosed facilities of, including buildings owned, leased, or operated by, the State of
35 Georgia, any unit of local government of the state, or any entity of state or local
36 government shall be subject to this article.

1 16-12-183.

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

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

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

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

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

10 (5) Convention facilities;

11 (6) Elevators;

12 (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture,
13 musical recital, or other similar performance;

14 (8) Health care facilities;

15 (9) Licensed child care and adult day-care facilities;

16 (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums,
17 trailer parks, retirement facilities, nursing homes, and other multiple-unit residential
18 facilities;

19 (11) Polling places;

20 (12) Public transportation facilities, including buses and taxicabs, and ticket, boarding,
21 and waiting areas of public transit depots;

22 (13) Restaurants;

23 (14) Restrooms, lobbies, reception areas, hallways, and other common use areas;

24 (15) Retail stores;

25 (16) Rooms, chambers, and places of meeting or public assembly when a public meeting
26 is in progress;

27 (17) Service lines;

28 (18) Shopping malls; and

29 (19) Sports arenas, including enclosed places in outdoor arenas.

30

31 16-12-184.

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

1 (b) Such prohibition on smoking shall be communicated to all existing employees by July
2 1, 2004, and to all prospective employees upon their application for employment.

3 (c) This Code section shall not apply to private places of employment that have fewer than
4 7 employees, except that smoking shall be prohibited in any public reception area of such
5 place of employment. This exception shall not apply to restaurants.

6 16-12-185.

7 Smoking shall be prohibited within a reasonable distance of 25 feet, unless such area is a
8 public roadway or is property owned by another individual or entity, outside an enclosed
9 area where smoking is prohibited, so as to ensure that tobacco smoke does not enter the
10 area through entrances, windows, ventilation systems, or other means.

11 16-12-186.

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

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

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

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

21 (4) Private and semiprivate rooms in nursing homes and long-term care facilities that are
22 occupied by one or more persons, all of whom are smokers and have requested in writing
23 to be placed in a room where smoking is permitted;

24 (5) Outdoor areas of places of employment;

25 (6) Any automobile or vehicle;

26 (7) Stand-alone bars;

27 (8) Smoking areas in international airports, as such areas are designated by the airport
28 operator; and

29 (9) Corporate offices of tobacco manufacturers.

30
31 16-12-187.

32 Notwithstanding any other provision of this article, an owner, operator, manager, or other
33 person in control of an establishment, facility, or outdoor area may declare that entire
34 establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited

1 in any place in which a sign conforming to the requirements of subsection (a) of Code
2 Section 16-12-188 is posted.

3 16-12-188.

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

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

12 16-12-189.

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

17

18 16-12-190.

19 (a) This article shall be enforced by the appropriate local government agency or agencies
20 designated by each unit of local government in this state.

21 (b) Each unit of local government in this state that issues business licenses shall give
22 notice of the provisions of this article to all applicants for a business license.

23 (c) Any citizen who desires to register a complaint under this article may initiate
24 enforcement with the agency designated by a unit of local government for enforcement.

25 (d) The health department and fire department of any unit of local government shall, while
26 an establishment is undergoing otherwise mandated inspections, inspect for compliance
27 with this article.

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

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

31 (g) In addition to any other remedy provided by law, a local government agency or any
32 person aggrieved by the failure of the owner, operator, or other person in control of a
33 public place or place of employment to comply with the provisions of this article may
34 apply for injunctive relief to enforce those provisions in any court of competent
35 jurisdiction.

1 16-12-191.

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

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

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

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

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

11 (c) A person who owns, manages, operates, or otherwise controls a public place or place
12 of employment shall have no civil or criminal liability under this article when such person
13 has complied with the duty to post the premises as required by subsection (a) of Code
14 Section 16-12-188, the duty to remove ashtrays and other smoking paraphernalia as
15 required by subsection (b) of Code Section 16-12-189, and the duty to inform violators of
16 the provisions of this article as required by subsection (e) of Code Section 16-12-190;
17 provided, however, that this exemption from liability shall not apply with respect to
18 wrongful discharge, refusal to hire, or retaliation which is prohibited by Code Section
19 16-12-189.

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

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

26 16-12-192.

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

33 16-12-193.

34 The agency designated by each unit of local government in this state shall annually request
35 other governmental and educational agencies having facilities within the area of the local

1 government to establish local operating procedures in cooperation and compliance with this
2 article.

3 16-12-194.

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

6 16-12-195.

7 This article shall be cumulative to and shall not prohibit the enactment of any other general
8 or local laws, rules, and regulations of state or local agencies or local ordinances
9 prohibiting smoking which are more restrictive than this article.

10 16-12-196.

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

12 **SECTION 3.**

13 Said chapter is further amended by repealing Code Section 16-12-2, relating to prohibited
14 smoking in public places. This repeal shall not, however, abate the prosecution of any
15 offense committed prior to July 1, 2005.

16 **SECTION 4.**

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