

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

AS PASSED SENATE

**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, trust, or
16 nonprofit entity that employs the services of one or more individuals.

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

20 (6) 'Health care facility' means an office or institution providing care or treatment of
21 diseases, whether physical, mental, or emotional, or other medical, physiological, or
22 psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals
23 or other clinics, including weight control clinics, homes for the chronically ill,
24 laboratories, and offices of surgeons, chiropractors, physical therapists, physicians,
25 dentists, and all specialists within these professions. This definition shall include all
26 waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care
27 facilities. This definition shall not include long-term care facilities as defined in
28 paragraph (3) of Code Section 31-8-81.

29 (7) 'Local governing authority' means a county or municipal corporation of the state.

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

36 (9) 'Public place' means an enclosed area, or an outdoor area when specifically included,
37 to which the public is invited or in which the public is permitted, including, but not

1 limited to, banks, bars, educational facilities, health care facilities, laundromats, public
 2 transportation facilities, reception areas, restaurants, retail food production and marketing
 3 establishments, retail service establishments, retail stores, shopping malls, sports arenas,
 4 theaters, and waiting rooms. A private residence is not a public place unless it is used as
 5 a child care, adult day-care, or health care facility.

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

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

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

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

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

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

23 16-12-182.

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

30 16-12-183.

31 Smoking shall be prohibited in all public places in this state, including, but not limited to,
 32 the following places:

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

- 1 (2) Areas available to and customarily used by the general public in businesses and
- 2 nonprofit entities patronized by the public, including, but not limited to, professional
- 3 offices, banks, laundromats, hotels, and motels;
- 4 (3) Bars, including patios;
- 5 (4) Bingo facilities when a bingo game is in progress;
- 6 (5) Convention facilities;
- 7 (6) Elevators;
- 8 (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture,
- 9 musical recital, or other similar performance;
- 10 (8) Health care facilities;
- 11 (9) Licensed child care and adult day-care facilities;
- 12 (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums,
- 13 trailer parks, retirement facilities, and other multiple-unit residential facilities;
- 14 (11) Polling places;
- 15 (12) Public transportation facilities, including buses and taxicabs, and ticket, boarding,
- 16 and waiting areas of public transit depots;
- 17 (13) Restaurants, including patios;
- 18 (14) Restrooms, lobbies, reception areas, hallways, and other common use areas;
- 19 (15) Retail stores;
- 20 (16) Rooms, chambers, and places of meeting or public assembly when a public meeting
- 21 is in progress;
- 22 (17) Service lines;
- 23 (18) Shopping malls; and
- 24 (19) Sports arenas, including enclosed places in outdoor arenas.

25 16-12-184.

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

31 (b) Such prohibition on smoking shall be communicated to all existing employees by July
32 1, 2005, and to all prospective employees upon their application for employment.

33 (c) This Code section shall not apply to private places of employment that have fewer than
34 five employees, except that smoking shall be prohibited in any public reception area of
35 such place of employment. This exemption shall not apply to restaurants and bars.

1 16-12-185.

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

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

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

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

11 (4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;

12 (5) Outdoor areas of places of employment except patios of bars and restaurants as
13 provided in Code Section 16-12-183;

14 (6) Smoking areas in international airports, as such areas are designated by the airport
15 operator;

16 (7) Corporate offices and manufacturing facilities of tobacco manufacturers; and

17 (8) Private and semiprivate rooms in health care facilities licensed under Title 31, except
18 as provided for under paragraph (4) of this Code section, that are occupied by one or
19 more persons, all of whom have written authorization by their treating physician to
20 smoke.

21 16-12-186.

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

27 16-12-187.

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

33 (b) Every public place and place of employment where smoking is prohibited by this
34 article shall have posted at every entrance a conspicuous sign clearly stating that smoking
35 is prohibited.

1 (c) All ashtrays shall be removed from any area where smoking is prohibited by this article
2 by the owner, operator, manager, or other person in control of the area, unless such ashtray
3 is permanently affixed to an existing structure.

4
5 16-12-188.

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

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) In addition to the fines established by this Code section, violation of this article by a
4 person who owns, manages, operates, or otherwise controls a public place or place of
5 employment may result in the suspension or revocation of any permit or license issued to
6 the person for the premises on which the violation occurred after the second violation
7 within one year.

8 (d) Each day on which a violation of this article occurs shall be considered a separate and
9 distinct violation.

10 16-12-191.

11 The Department of Human Resources and the agency designated by each local governing
12 authority in this state may engage in a continuing program to explain and clarify the
13 purposes and requirements of this article to citizens affected by it and to guide owners,
14 operators, and managers in their compliance with it. The program may include publication
15 of a brochure for affected businesses and individuals explaining the provisions of this
16 article.

17 16-12-192.

18 The agency designated by each local governing authority in this state may annually request
19 other governmental and educational agencies having facilities within the area of the local
20 government to establish local operating procedures in cooperation and compliance with this
21 article.

22 16-12-193.

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

25 16-12-194.

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

30 16-12-195.

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

1 **SECTION 3.**

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

5 **SECTION 4.**

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