

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

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 12 of Title 16 and Title 31 of the Official Code of Georgia Annotated,
 2 relating to offenses against public health and morals and to health, respectively, so as to
 3 provide comprehensive changes and additions to the prohibition on smoking in this state; to
 4 amend certain provisions relating to the prohibition against smoking in public places; to
 5 enact the "Georgia Smokefree Air Act of 2005"; to provide for definitions; to prohibit
 6 smoking in certain facilities and areas; to provide for exceptions; to provide that entire
 7 establishments, facilities, or outdoor areas shall be nonsmoking; to provide for posting of
 8 signs and removal of ashtrays; to provide for an informational program; to provide for
 9 enforcement; to provide that this prohibition shall be cumulative to other general or local
 10 acts, rules, and regulations; to provide for statutory construction; to provide for related
 11 matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against
 15 public health and morals, is amended by striking Code Section 16-12-2, relating to prohibited
 16 smoking in public places, and inserting in lieu thereof the following:

17 "16-12-2.

18 (a) A person who smokes smoking tobacco in violation of Chapter 12A of Title 31 any
 19 ~~form in any of the following public places~~ shall be guilty of a misdemeanor and, if
 20 convicted, shall be punished by a fine of not less than \$100.00 nor more than \$500.00.

21 ~~(1) An enclosed elevator which is used by or open to the public and which is clearly~~
 22 ~~designated by a no-smoking sign;~~

23 ~~(2) Any place on a public transportation vehicle which is used by the public and which~~
 24 ~~is clearly designated by a no-smoking sign;~~

25 ~~(3) Any area which is used by or open to the public and which is clearly designated by~~
 26 ~~a no-smoking sign; or~~

1 ~~(4) Any area which is the real property upon which is operated a day-care center, group~~
 2 ~~day-care home, or family day-care home, as defined in Code Section 49-5-3, during the~~
 3 ~~hours of operation of such facility.~~

4 ~~(b) A person convicted of violating subsection (a) of this Code section shall be punished~~
 5 ~~by a fine of not less than \$10.00 nor more than \$100.00.~~

6 ~~(c)(b)~~ This Code section shall be cumulative to and shall not prohibit the enactment of any
 7 other general and local laws, rules and regulations of state or local agencies, and local
 8 ordinances prohibiting smoking which are more restrictive than this Code section."

9 SECTION 2.

10 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding
 11 after Chapter 12 a new Chapter 12A to read as follows:

12 "CHAPTER 12A

13 31-12A-1.

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

15 31-12A-2.

16 As used in this chapter, the term:

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

21 (2) 'Business' means any corporation, sole proprietorship, partnership, limited
 22 partnership, limited liability corporation, limited liability partnership, professional
 23 corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether
 24 for profit or nonprofit.

25 (3) 'Employee' means an individual who is employed by a business in consideration for
 26 direct or indirect monetary wages or profit.

27 (4) 'Employer' means an individual or a business that employs one or more individuals.

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

31 (6) 'Health care facility' means an office or institution providing care or treatment of
 32 diseases, whether physical, mental, or emotional, or other medical, physiological, or
 33 psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals

1 or other clinics, including weight control clinics, homes for the chronically ill,
2 laboratories, and offices of surgeons, chiropractors, physical therapists, physicians,
3 dentists, and all specialists within these professions. This definition shall include all
4 waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care
5 facilities. This definition shall not include long-term care facilities as defined in
6 paragraph (3) of Code Section 31-8-81.

7 (7) 'Infiltrate' means to permeate an enclosed area by passing through its walls, ceilings,
8 floors, windows, or ventilation systems to the extent that an individual can smell
9 secondhand smoke.

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

11 (9) 'Place of employment' means an enclosed area under the control of a public or private
12 employer that employees utilize during the course of employment, including, but not
13 limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms,
14 classrooms, employee cafeterias, and hallways. A private residence is not a place of
15 employment unless it is used as a licensed child care, adult day-care, or health care
16 facility. This term shall not include vehicles used in the course of employment.

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

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

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

31 (13) 'Secondhand smoke' means smoke emitted from lighted, smoldering, or burning
32 tobacco when the person smoking is not inhaling, smoke emitted at the mouthpiece
33 during puff drawing, and smoke exhaled by the person smoking.

34 (14) '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 (15) 'Shopping mall' means an enclosed public walkway or hall area that serves to
37 connect retail or professional establishments.

1 (16) 'Smoking' means inhaling, exhaling, burning, or carrying any lighted tobacco
2 product including cigarettes, cigars, and pipe tobacco.

3 (17) 'Smoking area' means a separately designated enclosed room which need not be
4 entered by an employee in order to conduct business that is designated as a smoking area
5 and, when so designated as a smoking area, shall not be construed as to deprive
6 employees of a nonsmoking lounge, waiting area, or break room.

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

11 31-12A-3.

12 Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased,
13 or operated by, the State of Georgia, its agencies and authorities, and any political
14 subdivision of the state, municipal corporation, or local board or authority created by
15 general, local, or special Act of the General Assembly or by ordinance or resolution of the
16 governing body of a county or municipal corporation individually or jointly with other
17 political subdivisions or municipalities of the state.

18 31-12A-4.

19 Except as otherwise specifically authorized in Code Section 31-12A-6, smoking shall be
20 prohibited in all enclosed public places in this state.

21 31-12A-5.

22 (a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking shall be
23 prohibited in all enclosed areas within places of employment, including, but not limited to,
24 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 current employees by July
28 1, 2005, and to each prospective employee upon their application for employment.

29 31-12A-6.

30 (a) Notwithstanding any other provision of this chapter, the following areas shall be
31 exempt from the provisions of Code Sections 31-12A-4 and 31-12A-5:

32 (1) Private residences, except when used as a licensed child care, adult day-care, or
33 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 secondhand smoke from such stores does not
5 infiltrate into areas where smoking is prohibited under the provisions of this article;

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

7 (5) Outdoor areas of places of employment;

8 (6) Smoking areas in international airports, as designated by the airport operator;

9 (7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of
10 any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity
11 set forth in Code Section 10-13A-2;

12 (8) Private and semiprivate rooms in health care facilities licensed under Title 31 that are
13 occupied by one or more persons, all of whom have written authorization by their treating
14 physician to smoke;

15 (9) Bars and restaurants, as follows:

16 (A) All bars and restaurants to which access is denied to any person under the age of
17 18 and that do not employ any individual under the age of 18; or

18 (B) Private rooms in restaurants and bars if such rooms are enclosed and have an air
19 handling system independent from the main air handling system that serves all other
20 areas of the building and all air within the private room is exhausted directly to the
21 outside by an exhaust fan of sufficient size;

22 (10) Convention facility meeting rooms and public and private assembly rooms
23 contained within a convention facility not wholly or partially owned, leased, or operated
24 by the State of Georgia, its agencies and authorities, or any political subdivision of the
25 state, municipal corporation, or local board or authority created by general, local, or
26 special Act of the General Assembly while these places are being used for private
27 functions and where individuals under the age of 18 are prohibited from attending or
28 working as an employee during the function;

29 (11) Smoking areas designated by an employer which shall meet the following
30 requirements:

31 (A) The smoking area shall be located in a nonwork area where no employee, as part
32 of his or her work responsibilities, shall be required to enter, except such work
33 responsibilities shall not include custodial or maintenance work carried out in the
34 smoking area when it is unoccupied;

35 (B) Air handling systems from the smoking area shall be independent from the main
36 air handling system that serves all other areas of the building and all air within the
37 smoking area shall be exhausted directly to the outside by an exhaust fan of sufficient

1 size and capacity for the smoking area and no air from the smoking area shall be
2 recirculated through or infiltrate other parts of the building; and

3 (C) The smoking area shall be for the use of employees only.

4 The exemption provided for in this paragraph shall not apply to restaurants and bars; and

5 (12) Common work areas, conference and meeting rooms, and private offices in private
6 places of employment, other than medical facilities, that are open to the general public
7 by appointment only; except that smoking shall be prohibited in any public reception area
8 of such place of employment.

9 (13) Private clubs, military officer clubs and noncommissioned officer clubs.

10 (b) In order to qualify for exempt status under subsection (a) of this Code section, any area
11 described in subsection (a) of this Code section, except for areas described in paragraph (1)
12 of subsection (a) of this Code section, shall post conspicuously at every entrance a sign
13 indicating that smoking is permitted.

14 31-12A-7.

15 Notwithstanding any other provision of this chapter, an owner, operator, manager, or other
16 person in control of an establishment, facility, or outdoor area may declare that entire
17 establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited
18 in any place in which a sign conforming to the requirements of subsection (a) of Code
19 Section 31-12A-8 is posted.

20 31-12A-8.

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

26 (b) All ashtrays shall be removed from any area where smoking is prohibited by this
27 chapter by the owner, operator, manager, or other person in control of the area, unless such
28 ashtray is permanently affixed to an existing structure.

29 31-12A-9.

30 The Department of Human Resources and the agency designated by each local governing
31 authority in this state may engage in a continuing program to explain and clarify the
32 purposes and requirements of this chapter to citizens affected by it and to guide owners,
33 operators, and managers in their compliance with it. The program may include publication

1 of a brochure for affected businesses and individuals explaining the provisions of this
2 chapter.

3 31-12A-10.

4 The Department of Human Resources and the county boards of health and their duly
5 authorized agents are authorized and empowered to enforce compliance with this chapter
6 and the rules and regulations adopted and promulgated under this chapter and, in
7 connection therewith, to enter upon and inspect the premises of any establishment or
8 business at any reasonable time and in a reasonable manner, as provided in Article 2 of
9 Chapter 5 of this title.

10 31-12A-11.

11 The county boards of health may annually request other governmental and educational
12 agencies having facilities within the area of the local government to establish local
13 operating procedures in cooperation and compliance with this chapter.

14 31-12A-12.

15 This chapter shall be cumulative to and shall not prohibit the enactment of any other
16 general or local laws, rules, and regulations of state or local governing authorities or local
17 ordinances prohibiting smoking which are more restrictive than this chapter or are not in
18 direct conflict with this chapter.

19 31-12A-13.

20 (a) This chapter shall not be construed to permit smoking where it is otherwise restricted
21 by other applicable laws.

22 (b) Nothing in this chapter shall be construed as to repeal the provisions of Code Section
23 16-12-2.

24 (c) This chapter shall be liberally construed so as to further its purposes."

25 **SECTION 3.**

26 This Act shall become effective upon its approval by the Governor or upon its becoming law
27 without such approval only for purposes of promulgating rules and regulations; for all other
28 purposes, this Act shall become effective on July 1, 2005.

29 **SECTION 4.**

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