

House Bill 1420

By: Representatives Drenner of the 86<sup>th</sup> and Benfield of the 85<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to  
2 repeal existing provisions relating to the prohibition of smoking in public places and to enact  
3 new provisions on such subject; to state legislative findings; to define terms; to prohibit  
4 smoking in state and local government buildings and vehicles; to prohibit smoking in bars  
5 and restaurants; to provide exceptions and conditions; to provide for criminal punishment;  
6 to authorize local governments to adopt more restrictive ordinances and policies and provide  
7 for punishment of violations of such ordinances; to provide for other related matters; to  
8 provide for an effective date and applicability; to repeal conflicting laws; and for other  
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by  
13 repealing Chapter 12A, the "Georgia Smokefree Air Act of 2005," and by enacting a new  
14 Chapter 12A to read as follows:

15 style="text-align:center">"CHAPTER 12A

16 31-12A-1.

17 (a) The General Assembly finds that secondhand smoke has been proven to cause cancer,  
18 heart disease, and asthma attacks in both smokers and nonsmokers. In 2006, a report  
19 issued by the United States Surgeon General stated that the scientific evidence indicates  
20 that there is no risk-free level of exposure to secondhand smoke.

21 (b) It is the intent of the General Assembly to protect the health of individuals in public  
22 places and places of employment and riding in state government vehicles from the risks  
23 related to secondhand smoke. It is further the intent of the General Assembly to allow local  
24 governments to adopt local laws governing smoking within their jurisdictions that are more  
25 restrictive than this chapter.

26 31-12A-2.

27 As used in this chapter, the term:

28 (1) 'Bar' means an establishment with a permit to sell alcoholic beverages for  
29 consumption on the premises in which the serving of food is only incidental to the  
30 consumption of those beverages, including, but not limited to, taverns, nightclubs,  
31 cocktail lounges, and cabarets.

32 (2) 'Cigar bar' means an establishment with a permit to sell alcoholic beverages for  
33 consumption on the premises that:

34 (A) Generates 60 percent or more of its quarterly gross revenue from the sale of  
35 alcoholic beverages and 25 percent or more of its quarterly gross revenue from the sale  
36 of cigars;

37 (B) Has a humidor on the premises; and

38 (C) Does not allow individuals under the age of 21 to enter the premises.

39 Revenue generated from other tobacco sales shall not be used to determine whether an  
40 establishment meets the requirements of subparagraph (A) of this paragraph.

41 (3) 'Employee' means a person who is employed by an employer, who contracts with an  
42 employer or third person to perform services for an employer, or who otherwise performs  
43 services for an employer with or without compensation.

44 (4) 'Employer' means an individual person, business, association, political subdivision,  
45 or other public or private entity, including a nonprofit entity, that employs or contracts  
46 for or accepts the provision of services from one or more employees.

47 (5) 'Enclosed area' means an area with a roof or other overhead covering of any kind and  
48 walls or side coverings of any kind, regardless of the presence of openings for ingress and  
49 egress.

50 (6) 'Grounds' means an unenclosed area owned, leased, or occupied by state or local  
51 government.

52 (7) 'Local government' means a local political subdivision of this state, a local authority,  
53 or an authority or body created by an ordinance, joint resolution, or rules of any such  
54 entity.

55 (8) 'Local government building' means a building owned or leased as lessor by a local  
56 government or the area of a building leased as lessee and occupied by a local government.

57 (9) 'Local government vehicle' means a passenger-carrying vehicle owned, leased, or  
58 otherwise controlled by a local government and assigned permanently or temporarily by  
59 that local government to local government employees, agencies, institutions, or facilities  
60 for official local government business.

61 (10) 'Lodging establishment' means an establishment that provides lodging for pay to the  
62 public.

63 (11) 'Private club' means a country club or an organization that maintains selective  
64 members, is operated by the membership, does not provide food or lodging for pay to  
65 anyone who is not a member or a member's guest, and is either incorporated as a  
66 nonprofit corporation or is exempt from federal income tax as a nonprofit organization.

67 (12) 'Private residence' means a private dwelling that is not a child care facility and is not  
68 a nursing home or personal care home.

69 (13) 'Private vehicle' means a privately owned vehicle that is not used for commercial  
70 or employment purposes.

71 (14) 'Public place' means an enclosed area to which the public is invited or in which the  
72 public is permitted.

73 (15) 'Restaurant' means a food service establishment as defined in Code Section  
74 26-2-370.

75 (16) 'Smoking' means the use or possession of a lighted cigarette, lighted cigar, lighted  
76 pipe, or any other lighted tobacco product.

77 (17) 'State government' includes all agencies and entities of the executive, judicial, and  
78 legislative branches of the government of this state.

79 (18) 'State government building' means a building owned or leased as lessor by state  
80 government or the area of a building leased as lessee and occupied by state government.

81 (19) 'State vehicle' means a passenger-carrying vehicle owned, leased, or otherwise  
82 controlled by the state government and assigned permanently or temporarily to a state  
83 employee or state agency or entity for official state business.

84 (20) 'Tobacco shop' means a business establishment, the main purpose of which is the  
85 sale of tobacco, tobacco products, and accessories for such products, that receives no less  
86 than 75 percent of its total annual revenues from the sale of tobacco, tobacco products,  
87 and accessories for such products and does not serve food or alcohol on its premises.

88 31-12A-3.

89 (a) Smoking is prohibited inside state government buildings except as provided in  
90 subsection (b) of this Code section.

91 (b) Smoking is permitted inside state government buildings that are used for medical or  
92 scientific research to the extent that smoking is an integral part of the research. Smoking  
93 permitted under this subsection shall be confined to the area where the research is being  
94 conducted.

95 (c) The individual in charge of each state government building or the individual's designee  
96 shall post signs in conspicuous areas of the building. The signs shall state 'Smoking is  
97 Prohibited' and may include the international 'No Smoking' symbol, which consists of a

98 pictorial representation of a burning cigarette enclosed in a red circle with a red bar across  
 99 it. In addition, the individual in charge of the building or the individual's designee shall:  
 100 (1) Direct a person who is smoking inside the building to extinguish the lighted smoking  
 101 product; and  
 102 (2) In a state psychiatric hospital, provide written notice to individuals upon admittance  
 103 that smoking is prohibited inside the building and obtain the signature of the individual  
 104 or the individual's representative acknowledging receipt of the notice.  
 105 (d) Smoking is prohibited inside state vehicles. The individual or the individual's designee  
 106 in charge of assigning each state vehicle shall place one or more signs in conspicuous areas  
 107 of the vehicle. The signs shall state 'Smoking is Prohibited' and may include the  
 108 international 'No Smoking' symbol, which consists of a pictorial representation of a burning  
 109 cigarette enclosed in a red circle with a red bar across it. If the vehicle is used for  
 110 undercover law enforcement operations, a sign is not required to be placed in the vehicle  
 111 as provided in this subsection.

112 31-12A-4.

113 (a) Smoking is prohibited in all enclosed areas of restaurants and bars, except as provided  
 114 in subsection (b) of this Code section.

115 (b) Smoking may be permitted in the following places:

116 (1) A designated smoking guest room in a lodging establishment, provided that no more  
 117 than 20 percent of a lodging establishment's guest rooms may be designated smoking  
 118 guest rooms.

119 (2) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where  
 120 smoking is prohibited pursuant to this chapter. A cigar bar that begins operation after July  
 121 1, 2010, may only allow smoking if it is located in a freestanding structure occupied  
 122 solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed  
 123 area where smoking is prohibited pursuant to this chapter. To qualify under this  
 124 paragraph, the cigar bar must satisfactorily report on a quarterly basis to the Department  
 125 of Revenue, on a form prescribed by that department, the revenue generated from the sale  
 126 of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The  
 127 Department of Revenue shall determine whether any additional documentation is required  
 128 of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This  
 129 paragraph shall not apply to any business that is established for the purpose of avoiding  
 130 compliance with this chapter.

131 (3) A private club.

132 13-12A-5.

133 (a) A person who manages, operates, or controls a restaurant or bar in which smoking is  
134 prohibited shall:

135 (1) Conspicuously post signs clearly stating that smoking is prohibited. The signs may  
136 include the international 'No Smoking' symbol, which consists of a pictorial  
137 representation of a burning cigarette enclosed in a red circle with a red bar across it;

138 (2) Remove all indoor ashtrays and other smoking receptacles; and

139 (3) Direct a person who is smoking to extinguish the lighted tobacco product.

140 (b) Failure to comply with the provisions of subsection (a) of this Code section or  
141 continuing to smoke in a nonsmoking area described in this chapter following oral or  
142 written notice by the person in charge of the area or the person's designee constitutes a  
143 criminal infraction, and the person committing the infraction may be punished by a fine of  
144 not more than \$50.00. Any court which has jurisdiction over misdemeanors or local  
145 ordinance violations shall have jurisdiction over the criminal infraction established by this  
146 subsection, and any such infraction may be prosecuted in the same manner as either a  
147 misdemeanor or an ordinance violation. Conviction of an infraction under this subsection  
148 shall have no consequence other than payment of a penalty. A person convicted of a  
149 violation of this subsection shall not be assessed court costs.

150 13-12A-6.

151 (a) Except as otherwise provided in subsection (b) of this Code section, a local government  
152 may adopt and enforce ordinances and policies restricting or prohibiting smoking that are  
153 more restrictive than the provisions of this chapter and that apply in local government  
154 buildings, on local government grounds, in local vehicles, or in public places.

155 (b) A local ordinance or policy adopted under this Code section shall not restrict or  
156 prohibit smoking in the following places:

157 (1) A private residence;

158 (2) A private vehicle;

159 (3) A tobacco shop if smoke from the business does not migrate into an enclosed area  
160 where smoking is prohibited pursuant to this chapter. A tobacco shop that begins  
161 operation after July 1, 2010, may only allow smoking if it is located in a freestanding  
162 structure occupied solely by the tobacco shop and smoke from the shop does not migrate  
163 into an enclosed area where smoking is prohibited pursuant to this chapter;

164 (4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco  
165 products processor or manufacturer, or any tobacco leaf grower, processor, or dealer;

166 (5) A designated smoking guest room in a lodging establishment, provided that no more  
 167 than 20 percent of a lodging establishment's guest rooms may be designated smoking  
 168 guest rooms.

169 (6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where  
 170 smoking is prohibited pursuant to this chapter. A cigar bar that begins operation after  
 171 July 1, 2010, may only allow smoking if it is located in a freestanding structure occupied  
 172 solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed  
 173 area where smoking is prohibited pursuant to this chapter. To qualify under this  
 174 subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department  
 175 of Revenue, on a form prescribed by that department, the revenue generated from the sale  
 176 of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The  
 177 Department of Revenue shall determine whether any additional documentation is required  
 178 of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This  
 179 paragraph shall not apply to any business that is established for the purpose of avoiding  
 180 compliance with this chapter;

181 (7) A private club;

182 (8) A motion picture, television, theater, or other live production set; provided, however,  
 183 that this exemption applies only to an actor or performer portraying the use of tobacco  
 184 products during the production.

185 (c) Continuing to smoke in violation of a local ordinance may be punished by a fine of not  
 186 more than \$50.00. Conviction of an ordinance violation under this Code section shall have  
 187 no consequence other than payment of a penalty. A person smoking in violation of a local  
 188 ordinance or other rules, laws, or policies adopted under this Code section shall not be  
 189 assessed court costs."

190 **SECTION 2.**

191 This Act shall become effective on July 1, 2010. The enactment of this Act shall not abate  
 192 any pending criminal or civil action, and any such action shall continue to be governed by  
 193 prior law.

194 **SECTION 3.**

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