

House Bill 1420

By: Representatives Drenner of the 86th and Benfield of the 85th

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.