

House Bill 981

By: Representative Mitchell of the 88<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 16, 20, and 31 of the Official Code of Georgia Annotated, relating to crimes  
2 and offenses, education, and health, respectively, so as to specifically authorize counties and  
3 cities to exercise local control over certain activities related to smoking and vaping; to allow  
4 for certain regulations governing sales of tobacco products and vapor products to minors; to  
5 amend the "Georgia Smoke-free Air Act of 2005" to include electronic smoking devices; to  
6 change the short title of such Act and to make conforming changes to the penalty and other  
7 provisions related to such Act; to provide for definitions; related matters; to provide for an  
8 effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
12 amended by adding a new Code section to read as follows:

13 "16-12-177.

14 This article shall be cumulative to and shall not prohibit the enactment of any other general  
15 and local laws, rules and regulations of state and local authorities or agencies, and local  
16 ordinances prohibiting such activities which are more restrictive than this article or are not  
17 in direct conflict with this article."

18 style="text-align:center">**SECTION 2.**

19 Said title is further amended by revising Code Section 16-12-2, relating to smoking in public  
20 places, as follows:

21 "16-12-2.

22 (a) A person smoking tobacco or using an electronic smoking device in violation of  
23 Chapter 12A of Title 31 shall be guilty of a misdemeanor and, if convicted, shall be  
24 punished by a fine of not less than \$100.00 nor more than \$500.00.

25 (b) This Code section shall be cumulative to and shall not prohibit the enactment of any  
 26 other general and local laws, rules and regulations of state or local agencies, and local  
 27 ordinances prohibiting smoking and vaping which are more restrictive than this Code  
 28 section."

29 **SECTION 3.**

30 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by  
 31 revising subsection (h) of Code Section 20-1A-10, relating to regulation of early care and  
 32 education programs, as follows:

33 "(h) Persons who operate licensed, commissioned, or permitted early care and education  
 34 programs shall post signs prohibiting smoking and vaping to carry out the purposes of  
 35 Chapter 12A of Title 31."

36 **SECTION 4.**

37 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
 38 Chapter 12A, relating to the "Georgia Smoke-free Air Act of 2005," as follows:

39 "Chapter 12A

40 31-12A-1.

41 This chapter shall be known and may be cited as the 'Georgia Smoke-free Air Act ~~of 2005.~~'

42 31-12A-2.

43 As used in this chapter, the term:

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

48 (2) 'Business' means any corporation, sole proprietorship, partnership, limited  
 49 partnership, limited liability corporation, limited liability partnership, professional  
 50 corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether  
 51 for profit or nonprofit.

52 (3) 'Electronic smoking device' means any product that contains or delivers any other  
 53 substance intended for human consumption that can be used by a person to enable the  
 54 inhalation of vapor or aerosol from such product, including, but not limited to, electronic  
 55 cigarettes, electronic cigars, electronic pipes, hookahs, electronic hookahs, and vape pens.  
 56 The term does not include a humidifier or similar device that emits only water vapor or

57 an inhaler, nebulizer, or vaporizer regulated as a device by the United States Food and  
 58 Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

59 ~~(3)~~(4) 'Employee' means an individual who is employed by a business in consideration  
 60 for direct or indirect monetary wages or profit.

61 ~~(4)~~(5) 'Employer' means an individual or a business that employs one or more  
 62 individuals.

63 ~~(5)~~(6) 'Enclosed area' means all space between a floor and ceiling that is enclosed on all  
 64 sides by solid walls or windows, exclusive of doorways, which ~~extend~~ extends from the  
 65 floor to the ceiling.

66 ~~(6)~~(7) 'Health care facility' means an office or institution providing care or treatment of  
 67 diseases, whether physical, mental, or emotional, or other medical, physiological, or  
 68 psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals  
 69 or other clinics, including weight control clinics, homes for the chronically ill,  
 70 laboratories, and offices of surgeons, chiropractors, physical therapists, physicians,  
 71 dentists, and all specialists within these professions. ~~This definition term~~ shall include  
 72 all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health  
 73 care facilities. This definition term shall not include long-term care facilities as defined  
 74 in paragraph (3) of Code Section 31-8-81.

75 ~~(7)~~(8) 'Infiltrate' means to permeate an enclosed area by passing through its walls,  
 76 ceilings, floors, windows, or ventilation systems to the extent that an individual can smell  
 77 secondhand smoke or vapor.

78 ~~(8)~~(9) 'Local governing authority' means a county or municipal corporation of the state.

79 ~~(9)~~(10) 'Place of employment' means an enclosed area under the control of a public or  
 80 private employer that employees utilize during the course of employment, including, but  
 81 not limited to, work areas, employee lounges, restrooms, conference rooms, meeting  
 82 rooms, classrooms, employee cafeterias, and hallways. This term shall not include a ~~A~~  
 83 ~~private residence is not a place of employment~~ unless it is used as a licensed child care,  
 84 adult day-care, or health care facility. This term shall not include vehicles used in the  
 85 course of employment.

86 ~~(10)~~(11) 'Public place' means an enclosed area to which the public is invited or in which  
 87 the public is permitted, including, but not limited to, banks, bars, educational facilities,  
 88 health care facilities, laundromats, public transportation facilities, reception areas,  
 89 restaurants, retail food production and marketing establishments, retail service  
 90 establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.  
 91 This term shall not include a ~~A private residence is not a public place~~ unless it is used as  
 92 a licensed child care, adult day-care, or health care facility.

93 ~~(11)~~(12) 'Restaurant' means an eating establishment, including, but not limited to, coffee  
 94 shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives  
 95 or offers for sale food to the public, guests, or employees, as well as kitchens and catering  
 96 facilities in which food is prepared on the premises for serving elsewhere. The term shall  
 97 include a bar area within any restaurant.

98 ~~(12)~~(13) 'Retail tobacco store' means a retail store utilized primarily for the sale of  
 99 tobacco products or vapor products and accessories and in which the sale of other  
 100 products is merely incidental.

101 ~~(13)~~(14) 'Secondhand smoke or vapor' means smoke or vapor emitted from lighted,  
 102 smoldering, ~~or~~ burning, or using tobacco or an electronic smoking device when the  
 103 person smoking or vaping is not inhaling, smoke or vapor emitted at the mouthpiece  
 104 during puff drawing, and smoke or vapor exhaled by the person smoking or vaping.

105 ~~(14)~~(15) 'Service line' means an indoor line in which one or more persons are waiting for  
 106 or receiving service of any kind, whether or not the service involves the exchange of  
 107 money.

108 ~~(15)~~(16) 'Shopping mall' means an enclosed public walkway or hall area that serves to  
 109 connect retail or professional establishments.

110 ~~(16)~~(17) 'Smoking and vaping' or 'smoking or vaping' means inhaling, exhaling, burning,  
 111 or carrying any lighted tobacco product, including cigarettes, cigars, and pipe tobacco.  
 112 The term also includes the use of an electronic smoking device.

113 ~~(17)~~(18) 'Smoking and vaping area' means a separately designated enclosed room which  
 114 need not be entered by an employee in order to conduct business that is designated as a  
 115 smoking and vaping area and, when so designated as a smoking and vaping area, shall  
 116 not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break  
 117 room.

118 ~~(18)~~(19) 'Sports arena' means enclosed stadiums and enclosed sports pavilions,  
 119 gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling  
 120 alleys, and other similar places where members of the general public assemble to engage  
 121 in physical exercise, participate in athletic competition, or witness sports or other events.

122 31-12A-3.

123 Smoking and vaping shall be prohibited in all outdoor public facilities and in all enclosed  
 124 facilities of the State of Georgia, including buildings owned, leased, or operated by; the  
 125 ~~State of Georgia~~ state, its agencies and authorities, and any political subdivision of the  
 126 state, municipal corporation, or local board or authority created by general, local, or special  
 127 Act of the General Assembly or by ordinance or resolution of the governing body of a

128 county or municipal corporation individually or jointly with other political subdivisions or  
 129 municipalities of the state.

130 31-12A-4.

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

133 31-12A-5.

134 (a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking and  
 135 vaping shall be prohibited in all enclosed areas within places of employment, including,  
 136 but not limited to, common work areas, auditoriums, classrooms, conference and meeting  
 137 rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges,  
 138 stairs, restrooms, and all other enclosed facilities.

139 (b) Such prohibition on smoking and vaping shall be communicated to all current  
 140 employees by ~~July 1, 2005~~ September 1, 2020, and to each prospective employee upon  
 141 ~~their~~ his or her application for employment.

142 31-12A-6.

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

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

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

150 (3) Retail tobacco or vapor stores, provided that secondhand smoke or vapor from such  
 151 stores does not infiltrate into areas where smoking ~~is~~ and vaping are prohibited under the  
 152 provisions of this chapter;

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

154 (5) Outdoor areas of places of employment;

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

156 ~~(7)(6)~~ All workplaces of any manufacturer, importer, or wholesaler of tobacco products,  
 157 of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity  
 158 set forth in Code Section 10-13A-2;

159 (7) All workplaces of any manufacturer, importer, or wholesaler of vapor products, of  
 160 any vapor retailer, and all vapor product storage facilities;

- 161 (8) Private and semiprivate rooms in health care facilities licensed under this title that  
162 are occupied by one or more persons, all of whom have written authorization by their  
163 treating physician to smoke or vape;
- 164 (9) Bars and restaurants, as follows:
- 165 (A) All bars and restaurants to which access is denied to any person under the age  
166 of ~~18~~ 21 and that do not employ any individual under the age of ~~18~~ 21; or
- 167 (B) Private rooms in restaurants and bars if such rooms are enclosed and have an air  
168 handling system independent from the main air handling system that serves all other  
169 areas of the building and all air within the private room is exhausted directly to the  
170 outside by an exhaust fan of sufficient size;
- 171 (10) Convention facility meeting rooms and public and private assembly rooms  
172 contained within a convention facility not wholly or partially owned, leased, or operated  
173 by the State of Georgia, its agencies and authorities, or any political subdivision of the  
174 state, municipal corporation, or local board or authority created by general, local, or  
175 special Act of the General Assembly while these places are being used for private  
176 functions and where individuals under the age of ~~18~~ 21 are prohibited from attending or  
177 working as an employee during the function;
- 178 (11) Smoking and vaping areas designated by an employer which shall meet the  
179 following requirements:
- 180 (A) The smoking and vaping area shall be located in a nonwork area where no  
181 employee, as part of his or her work responsibilities, shall be required to enter, except  
182 such work responsibilities shall not include custodial or maintenance work carried out  
183 in the smoking and vaping area when it is unoccupied;
- 184 (B) Air handling systems from the smoking and vaping area shall be independent from  
185 the main air handling system that serves all other areas of the building, and all air  
186 within the smoking and vaping area shall be exhausted directly to the outside by an  
187 exhaust fan of sufficient size and capacity for the smoking and vaping area, and no air  
188 from the smoking and vaping area shall be recirculated through or infiltrate other parts  
189 of the building; and
- 190 (C) The smoking and vaping area shall be for the use of employees only.
- 191 The exemption provided for in this paragraph shall not apply to restaurants and bars;
- 192 (12) Common work areas, conference and meeting rooms, and private offices in private  
193 places of employment, other than medical facilities, that are open to the general public  
194 by appointment only; except that smoking and vaping shall be prohibited in any public  
195 reception area of such place of employment; and
- 196 (13) Private clubs, military officer clubs, and noncommissioned officer clubs.

197 (b) In order to qualify for exempt status under subsection (a) of this Code section, any area  
 198 described in subsection (a) of this Code section, except for areas described in paragraph (1)  
 199 of subsection (a) of this Code section, shall post conspicuously at every entrance a sign  
 200 indicating that smoking ~~is~~ and vaping are permitted.

201 31-12A-7.

202 Notwithstanding any other provision of this chapter, an owner, operator, manager, or other  
 203 person in control of an establishment, facility, or outdoor area may declare that entire  
 204 establishment, facility, or outdoor area as a ~~nonsmoking~~ place in which smoking and  
 205 vaping are prohibited. Smoking ~~and vaping~~ shall be prohibited in any place in which a sign  
 206 conforming to the requirements of subsection (a) of Code Section 31-12A-8 is posted.

207 31-12A-8.

208 (a) ~~'No Smoking' signs or the international 'No Smoking' symbol consisting of a pictorial~~  
 209 ~~representation of a burning cigarette enclosed in a red circle with a red bar across it may~~  
 210 ~~be clearly and conspicuously posted by the~~ The owner, operator, manager, or other person  
 211 in control in every public place and place of employment where smoking ~~is~~ and vaping are  
 212 prohibited by this chapter may clearly and conspicuously post:

213 (1) 'No Smoking' and 'No Vaping' signs; or

214 (2) The international 'No Smoking' symbol consisting of a pictorial representation or a  
 215 burning cigarette enclosed in a red circle with a red bar across it and the international 'No  
 216 Vaping' or 'No Electronic Cigarette' symbol consisting of a vapor pen emitting vapor  
 217 enclosed in a red circle with a red bar across it.

218 (b) All ashtrays shall be removed from any area where smoking ~~is~~ and vaping are  
 219 prohibited by this chapter by the owner, operator, manager, or other person in control of  
 220 the area, unless such ashtray is permanently affixed to an existing structure.

221 31-12A-9.

222 The Department of Public Health and the agency designated by each local governing  
 223 authority in this state may engage in a continuing program to explain and clarify the  
 224 purposes and requirements of this chapter to citizens affected by it and to guide owners,  
 225 operators, and managers in their compliance with it. The program may include print or  
 226 electronic publication of a brochure for affected businesses and individuals explaining the  
 227 provisions of this chapter.

228 31-12A-10.

229 The Department of Public Health and the county boards of health and their duly authorized  
 230 agents are authorized and empowered to enforce compliance with this chapter and the rules  
 231 and regulations adopted and promulgated under this chapter and, in connection therewith,  
 232 to enter upon and inspect the premises of any establishment or business at any reasonable  
 233 time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

234 31-12A-11.

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

238 31-12A-12.

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

243 31-12A-13.

244 (a) This chapter shall not be construed to permit smoking and vaping where ~~it is~~ such  
 245 activities are otherwise restricted by other applicable laws.

246 (b) Nothing in this chapter shall be construed as to repeal the provisions of Code Section  
 247 16-12-2.

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

249 **SECTION 5.**

250 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 251 without such approval.

252 **SECTION 6.**

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