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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**

**AN ACT**

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

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

"16-12-2.

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

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

**SECTION 2.**

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

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"CHAPTER 12A

31-12A-1.

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

31-12A-2.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) 'Sports arena' means enclosed stadiums and enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys,

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and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

31-12A-3.

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

31-12A-4.

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

31-12A-5.

(a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking shall be prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private

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offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

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

31-12A-6.

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

- (1) Private residences, except when used as a licensed child care, adult day-care, or health care facility;
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated;
- (3) Retail tobacco stores, provided that secondhand smoke from such stores does not infiltrate into areas where smoking is prohibited under the provisions of this article;
- (4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;
- (5) Outdoor areas of places of employment;
- (6) Smoking areas in international airports, as designated by the airport operator;
- (7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of

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any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity set forth in Code Section 10-13A-2;

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

(9) Bars and restaurants, as follows:

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

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

(10) Convention facility meeting rooms and public and private assembly rooms contained within a convention facility not wholly or partially owned, leased, or operated by the State of Georgia, its agencies and authorities, or any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or

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special Act of the General Assembly while these places are being used for private functions and where individuals under the age of 18 are prohibited from attending or working as an employee during the function;

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

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

(B) Air handling systems from the smoking area shall be independent from the main air handling system that serves all other areas of the building and all air within the smoking area shall be exhausted directly to the outside by an exhaust fan of sufficient size and capacity for the smoking area and no air from the smoking area shall be recirculated through or infiltrate other parts of the building; and

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

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

(12) Common work areas, conference and meeting rooms, and private offices in private

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places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment.

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

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

31-12A-7.

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

31-12A-8.

(a) 'No Smoking' signs or the international 'No Smoking' symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in

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control in every public place and place of employment where smoking is prohibited by this article.

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

31-12A-9.

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

31-12A-10.

The Department of Human Resources and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of any establishment or

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business at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

31-12A-11.

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

31-12A-12.

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

31-12A-13.

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

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

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

**SECTION 3.**

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

**SECTION 4.**

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

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