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Ronald Griffin

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CRIMES AND OFFENSES

Offenses Against Public Health and Morals: Repeal Prohibition Against Consuming Water on Public Transit

CODE SECTION:	O.C.G.A. § 16-12-120 (amended)
BILL NUMBER:	HB 175
ACT NUMBER:	77
GEORGIA LAWS:	2003 Ga. Laws 338
SUMMARY:	The Act repeals the prohibition against consuming bottled water on public transit.
EFFECTIVE DATE:	July 1, 2003

History

Many state transit authorities prohibit consuming food and beverages on public transit vehicles, but in Georgia, it was state law, not just a policy.¹ This legislation began as a marketing idea from the Atlanta Coca-Cola Bottling Company, a division of Coca-Cola Enterprises (“Atlanta CCE”).² The Atlanta CCE marketing group met with the marketing representatives from the Metropolitan Atlanta Rapid Transit Authority (“MARTA”) to propose joint promotional efforts for city events where MARTA was the preferred method of transportation.³ MARTA’s marketing group liked the idea but would not have been able to move forward because the state’s “zero tolerance” policy prohibited consumption of all beverages on public transit.⁴ Atlanta CCE inquired into changing the policy and “de-criminaliz[ing] the consumption of bottled water.”⁵

1. See Interview with Kevin Perry, Director, Georgia Soft Drink Association (May 14, 2003) [hereinafter Perry Interview].

2. See *id.*

3. See *id.*

4. See *id.*

5. See *id.*

A Tale of Two Bills

HB 778

Representatives George Maddox of the 59th district, Kathy B. Ashe of the 42nd district, Stan Watson of the 60th district, and Earnest “Coach” Williams of the 61st district sponsored HB 778, which would have allowed “resealable bottled water” on public transit.⁶ Because a bill must pass the chamber in which it was introduced before midnight on the 33rd day of the session, HB 778’s fate was sealed that day.⁷

The General Assembly grappled with the debate over a new state flag for most of the 33rd day.⁸ The flag bill passed the House at 11:45 p.m.⁹ HB 778, along with seven other bills, passed after the flag legislation but did not reach the Secretary of the Senate, Frank Eldridge, before midnight.¹⁰ The Senate would not consider the bill, and it died.¹¹ This indirectly decided the course of HB 175.

HB 175

HB 175 began as a grandfather’s attempt to protect children in the State of Georgia.¹² Representatives Paul Smith of the 13th district, Lynn Smith of the 87th district, Vance Smith, Jr. of the 110th district, and Bob Smith of the 76th district sponsored HB 175.¹³ In its original form, HB 175’s purpose was to prohibit smoking in an enclosed car with a child strapped in a car seat.¹⁴ After a minor modification, stipulating a \$15 fine for violators, HB 175 passed the House on April 8, 2003, by a vote of 109 to 52.¹⁵

6. HB 778, as introduced, 2003 Ga. Gen. Assem.

7. See Perry Interview, *supra* note 1.

8. See *id.*; Jim Tharpe, *How a Bill Gets Hijacked*, ATLANTA J. CONST., May 8, 2003, available at 2003 WL 19317052.

9. Perry Interview, *supra* note 1. Mr. Perry stated, “we were a victim of the flag at every turn.” *Id.*

10. See *id.*

11. *Id.*

12. See Audio Recording of House Proceedings, Apr. 8, 2003 (remarks by Rep. Paul Smith), at http://www.georgia.gov/00/channel/0,2141,4802_6108105,00.html [hereinafter House Audio One].

13. See HB 175, as introduced, 2003 Ga. Gen. Assem.

14. See *id.*; House Audio One, *supra* note 12.

15. See State of Georgia Final Composite Status Sheet, HB 175, Apr. 25, 2003; Georgia House of Representatives Voting Record, HB 175 (Apr. 8, 2003). Compare HB 175 (HCS), 2003 Ga. Gen. Assem., with HB 175, as introduced, 2003 Ga. Gen. Assem.

On the last day of the session, April 25, 2003, Kevin Perry, lobbyist for the Georgia Soft Drink Association, found a vehicle for the provisions of HB 778: HB 175.¹⁶ Senator Charles Tanksley of the 32nd district and Chairman of the Senate Judiciary Committee informed Mr. Perry that HB 175 affected the same Georgia Code Title and Chapter as HB 778 and was therefore a candidate to receive HB 778's language.¹⁷ Representative Paul Smith gave his permission to add the language from HB 778 to his bill, HB 175, as long as "the change did not harm the anti-smoking provisions of his legislation."¹⁸

When HB 175 came out of the Senate Committee, the Committee had changed it so significantly that only the title resembled the original bill.¹⁹ The Senate Committee feared that enforcement issues would prevent HB 175, as introduced, from passing the Senate.²⁰ Consequently, the Senate Committee removed the anti-smoking provisions from the bill, leaving only the language from HB 778.²¹ The Senate Committee substitute passed the Senate at 6:17 p.m. on April 25, 2003.²² However, the House still had to approve the Senate's version before midnight.

Upon reconsideration, the House reinserted the original smoking provisions into HB 175 and approved the bill, as amended, by a vote of 119 to 26.²³ Therefore, the Senate had to approve the House's amended version. The Senate insisted on its version, and the House did the same, resulting in the appointment of a Conference Committee.²⁴ Representative Paul Smith, who sponsored HB 175, was not available; the members of the Conference Committee were

16. See Perry Interview, *supra* note 1.

17. See *id.*

18. See Tharpe, *supra* note 8. Representative Smith was not available when the Senate Judiciary Committee discussed HB 175 because he was busy trying to defeat another bill. *Id.*

19. See *id.*

20. See Perry Interview, *supra* note 1; see also House Audio One, *supra* note 12. Representative Burkhalter supported HB 175, as introduced, but said the bill would never pass the Senate. See Telephone Interview with Rep. Mark Burkhalter, House District No. 36 (June 2, 2003) [hereinafter Burkhalter Interview].

21. See Perry Interview, *supra* note 1.

22. The bill passed the Senate by a vote of 47 to 0. See Georgia Senate Voting Record, HB 175 (Apr. 25, 2003).

23. See Georgia House of Representatives Voting Record, HB 175 (Apr. 25, 2003). Compare HB 175 (SCS), 2003 Ga. Gen. Assem., with HB 175 (HFA), 2003 Ga. Gen. Assem.

24. See Audio Recording of House Proceedings, Apr. 25, 2003 (remarks by Speaker of the House Terry Coleman), at http://www.georgia.gov/00/channel/0,2141,4802_6108105,00.html; Audio Recording of Senate Proceedings, Apr. 25, 2003 (remarks by Lt. Gov. Mark Taylor), at http://www.georgia.gov/00/channel/0,2141,4802_6107105,00.html [hereinafter Senate Audio].

Representative Larry Parrish of the 102nd district, Representative George Maddox of the 59th district, Representative Mark Burkhalter of the 36th district, Senator Charles Tanksley of the 32nd district, Senator Charles Clay of the 37th district, and Senator Randy Hall of the 22nd district.²⁵ The Conference Committee retained only the language from HB 778.²⁶ Consequently, a bill to ban smoking in closed cars with children turned into a bill to allow MARTA and a bottled water vendor to enter into a mutually beneficial marketing agreement.²⁷ The Conference Committee substitute passed the Senate by a vote of 47 to 0 and passed the House by a vote of 159 to 0.²⁸ Representative Burkhalter noted that the General Assembly substantially changed roughly 80% of the bills that passed that day.²⁹

Although the original purpose was to allow bottled water on all transit systems, the amended bill allowed each transit authority to decide whether its riders may consume bottled water.³⁰ As a result, the amended bill gave each transit system more discretion to engage in marketing agreements with water companies.³¹

The Act

The Act amends Code section 16-12-120 by adding language to paragraph (4) of subsection (a).³² This amendment removes bottled water from the state's "zero tolerance" policy prohibiting beverages and food on public transportation trains and buses in Georgia.³³

Ronald Scott Griffin

25. See Senate Audio, *supra* note 24.

26. See Perry Interview, *supra* note 1.

27. See *id.*

28. See Georgia House of Representatives Voting Record, HB 175 (Apr. 25, 2003); Georgia Senate Voting Record, HB 175 (Apr. 25, 2003).

29. See Burkhalter Interview, *supra* note 20.

30. See Perry Interview, *supra* note 1.

31. See *id.*

32. Compare 1998 Ga. Laws 890, § 1, at 891 (formerly found at O.C.G.A. § 16-12-120(a)(4) (1999)), with O.C.G.A. § 16-12-120(a)(4) (2003).

33. See Perry Interview, *supra* note 1.