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HEALTH Health: Enact the "Georgia Smokefree Air Act of 2005"; Provide for Definitions; Prohibit Smoking in Certain Facilities and Areas; Provide for Exceptions; Provide That Entire Establishments, Facilities, or Outdoor Areas Shall Be Nonsmoking; Provide for Posting of Signs and Removal of Ashtrays; Provide for an Informational Program; Provide for Enforcement; Provide That This Prohibition Shall Be Cumulative to Other General or Local Acts, Rules, and Regulations; Provide for Statutory Construction; Provide for Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes

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HEALTH

Health: Enact the "Georgia Smokefree Air Act of 2005"; Provide for Definitions; Prohibit Smoking in Certain Facilities and Areas; Provide for Exceptions; Provide That Entire Establishments, Facilities, or Outdoor Areas Shall Be Nonsmoking; Provide for Posting of Signs and Removal of Ashtrays; Provide for an Informational Program; Provide for Enforcement; Provide That This Prohibition Shall Be Cumulative to Other General or Local Acts, Rules, and Regulations; Provide for Statutory Construction; Provide for Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 16-12-2 (amended), 31-12A-1 to -13 (new)
BILL NUMBERS:	SB 90, HB 426
ACT NUMBER:	368
GEORGIA LAWS:	2005 Ga. Laws 1184
SUMMARY:	The Act prohibits smoking in all enclosed public places in Georgia. The Act exempts private residences, hotel and motel rooms (as long as the hotel or motel does not designate more than 20% of the rooms as smoking), retail tobacco stores, long term care facilities, outdoor areas of employment, smoking areas in international airports, all workplaces of any manufacturer, importer, or wholesaler of tobacco products, private and semiprivate rooms in healthcare facilities (with written authorization from the treating physician), all bars and restaurants denying access and employment to those under the age of 18, convention facilities denying access and employment to those under the age of 18, common work areas open to the

public by appointment only, private clubs, military and noncommissioned officer clubs, and designated smoking areas located in nonwork areas with independent air handling systems. The Act also requires the posting of nonsmoking signs and the removal of all ashtrays. Finally, the Act makes it a misdemeanor for an individual to violate this bill and imposes a fine of \$100 to \$500.

EFFECTIVE DATE: July 1, 2005

History

Senator Don Thomas of the 54th district spent four years working on SB 90.¹ His interest and passion for the bill stems from his 45 year career as a family physician and experience with patients dying from cancer, heart attacks, strokes, and other smoking-related illnesses.² Georgia spends \$1.2 billion in direct health care costs every year on tobacco-related diseases, and each pack of cigarettes sold costs the state approximately \$7.18 in medical costs and lost productivity.³ The General Assembly recognized the costs to Georgians in both dollars and health and passed SB 90.⁴

Bill Tracking of SB 90

Consideration by the Senate

Senators Don Thomas, Kasim Reed, Renee Unterman, Nancy Schaefer, and Steen Miles the 54th, 35th, 45th, 50th, and 43rd

1. Audio Recording of Senate Proceedings, Feb. 23, 2005 (remarks by Sen. Don Thomas), http://www.georgia.gov/00/channel_title/0,2094,4802_6107103.html [hereinafter Senate Audio].

2. *See id.*; Telephone Interview with Sen. Don Thomas, Senate District No. 54 (Apr. 6, 2005) [hereinafter Thomas Interview].

3. *See* Senate Audio, *supra* note 1 (remarks by Sen. Don Thomas).

4. *See id.* (remarks by Sens. Don Thomas and Kasim Reed); State of Georgia Final Composite Status Sheet, SB 90, Mar. 31, 2005 (May 11, 2005).

districts, respectively, sponsored SB 90.⁵ The Senate first read the bill on January 31, 2005.⁶ The Senate Health and Human Services Committee favorably reported the bill, by substitute, on February 9, 2005.⁷

The Bill, As Introduced

The current law in Georgia prohibits smoking in the following areas that are clearly designated by no-smoking signs: public elevators, public transportation vehicles, and public areas.⁸ The current law also prohibits smoking in daycare centers.⁹ As introduced, the bill would have prohibited smoking in the following areas:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including, but not limited to, professional offices, banks, laundromats, hotels, and motels;
- (3) Bars, but which shall not include stand-alone bars;
- (4) Bingo facilities when a bingo game is in progress;
- (5) Convention facilities;
- (6) Elevators;
- (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
- (8) Health care facilities;
- (9) Licensed child care and adult day-care facilities;
- (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (11) Polling places;
- (12) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots;
- (13) Restaurants;
- (14) Restrooms, lobbies, reception areas, hallways, and other common use areas;
- (15) Retail stores;
- (16) Rooms, chambers, and places of meeting or public assembly when a public meeting

5. See SB 90, as introduced, 2005 Ga. Gen. Assem.

6. See State of Georgia Final Composite Status Sheet, SB 90, Jan. 31, 2005 (May 11, 2005).

7. See State of Georgia Final Composite Status Sheet, SB 90, Feb. 9, 2005 (May 11, 2005).

8. 1994 Ga. Laws 650, §3, at 651-52 (formerly found at O.C.G.A. § 16-12-2 (2002)).

9. *Id.* at 652.

is in progress; (17) Service lines; (18) Shopping malls; and (19) Sports arenas, including enclosed places in outdoor arenas.¹⁰

Committee Substitute

The Committee substitute strengthened the smoking ban by including vehicles used in employment.¹¹ Other than this addition, the substitute was essentially the same as the original bill.¹²

Floor Debate and Amendments

During the floor debate, a number of Senators spoke about the bill.¹³ Senator Don Thomas spoke of both the economic and health consequences of secondhand smoke.¹⁴ He also listed a number of organizations that supported the bill, such as the Georgia Restaurant Association, the National Federation of Independent Business, the Association of County Commissioners, and the Building Owners and Managers of Atlanta.¹⁵ Senator Thomas stated that over 80% of Georgians surveyed supported the bill, and “72% of small business owners surveyed favored a ban on smoking.”¹⁶ Senator Thomas addressed constitutional concerns by stating that “[t]he right to breathe clean air supercedes the desire of the smoker to smoke.”¹⁷ Senator Thomas submitted three amendments to the bill for clarification and to remove vehicles from the bill.¹⁸ All three amendments passed.¹⁹

Senators who opposed the bill focused first on the penalties and fines the bill imposed.²⁰ In particular, Senator John Wiles expressed concern that the bill allowed the state to take away a business license

10. SB 90, as introduced, 2005 Ga. Gen. Assem.

11. *Compare* SB 90, as introduced, 2005 Ga. Gen. Assem., with SB 90 (SCS), 2005 Ga. Gen. Assem.

12. *Compare* SB 90 (SCS), 2005 Ga. Gen. Assem., with SB 90, as introduced, 2005 Ga. Gen. Assem.

13. *See generally* Senate Audio, *supra* note 1 (discussing SB 90).

14. *Id.* (remarks by Sen. Don Thomas).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Senate Audio, *supra* note 1.

20. *See id.* (remarks by Sen. John Wiles).

on the first violation of the bill.²¹ Senator Wiles submitted Floor Amendment 10, which limited the right to revoke a business license to the second violation of the Act within one year.²² The Senate passed this amendment.²³

A second area of concern was the continued increase in government regulation at the expense of small businesses.²⁴ Senator George Hooks addressed this concern in his discussion of Floor Amendment 5, which created an exemption for businesses with ten or fewer employees.²⁵ Senator Hooks pointed out that small business owners should have the right to run their businesses as they see fit.²⁶ In response to Floor Amendment 5, Senator Doug Stoner of the 6th district submitted Floor Amendment 5A, which reduced the exemption from ten or fewer employees to five or fewer employees.²⁷ Senator Stoner pointed out that "85% of the businesses in this state employ ten or less employees."²⁸ Senator Stoner's amendment also clarified that this exception would not apply to restaurants or bars.²⁹ The Senate passed both amendments 5 and 5A.³⁰

The Senate introduced several other amendments that failed to pass.³¹ Two of these involved exemptions for Underground Atlanta and private clubs of fraternal, religious, or veteran organizations.³² A third amendment attempted to eliminate the rule that prohibited smoking within 25 feet of a main public entrance to a building.³³ A fourth amendment attempted to strike the requirement that hotels cap the number of smoking rooms at 20%.³⁴ The Senate did not pass these four amendments.³⁵

21. *Id.*

22. *Id.*

23. *Id.*

24. *See id.* (remarks by Sen. George Hooks).

25. Senate Audio, *supra* note 1 (remarks by Sen. George Hooks).

26. *Id.*

27. *Id.* (remarks by Sen. Doug Stoner).

28. *Id.*

29. *Id.*

30. Senate Audio, *supra* note 1.

31. *Id.*

32. *Id.* (remarks by Sens. John Bulloch and Sam Zamarripa).

33. *Id.* (remarks by Sen. Brian Kemp).

34. *Id.* (remarks by Sen. Chip Rogers).

35. Senate Audio, *supra* note 1.

The Senate adopted the Committee substitute, as amended, and passed SB 90 by a vote of 44 to 7 on February 23, 2005.³⁶

Consideration by the House

The House introduced HB 426, a bill similar to SB 90.³⁷ The House first read this bill on February 10, 2005, and it read the bill for a second time on February 14, 2005.³⁸ However, the House took no further action on HB 426.³⁹

Regarding SB 90, after the bill's first and second reading (February 24, 2005 and February 25, 2005, respectively), the House Health and Human Services Committee favorably reported the bill, by substitute, on March 15, 2005.⁴⁰

Committee Substitute

The Committee substitute created four major exemptions not present in the Senate version of the bill.⁴¹ Bars and restaurants were exempt from the bill as long as they did not allow access to or employ anyone under the age of 18.⁴² Finally, the Committee substitute created an exemption for designated smoking areas, which did not apply to restaurants and bars.⁴³ In order for a smoking area to be exempt under this bill, it must be in a nonwork area and have an independent air handling system.⁴⁴ The Committee substitute also omitted the section regarding penalties and fines for violating the Act, and moved the location of the bulk of the bill from Title 16 (Crimes and Offenses) of the Georgia Code to a newly created chapter in Title 31 (Health).⁴⁵

36. Georgia Senate Voting Record, SB 90 (Feb. 23, 2005).

37. State of Georgia Final Composite Status Sheet, HB 426, Feb. 10, 2005 (May 11, 2005).

38. *Id.*; State of Georgia Final Composite Status Sheet, HB 426, Feb. 14, 2005 (May 11, 2005).

39. State of Georgia Final Composite Status Sheet, HB 426 (May 11, 2005).

40. State of Georgia Final Composite Status Sheet, SB 90, Feb. 24, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 90, Feb. 25, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 90, Mar. 15, 2005 (May 11, 2005).

41. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (SCS), 2005 Ga. Gen. Assem.

42. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (SCS), 2005 Ga. Gen. Assem.

43. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (SCS), 2005 Ga. Gen. Assem.

44. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (SCS), 2005 Ga. Gen. Assem.

45. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (SCS), 2005 Ga. Gen. Assem.

Floor Debate and Amendments

During the floor debate, a number of representatives spoke in favor of and in opposition to the bill.⁴⁶ The House also proposed a number of amendments.⁴⁷ However, the House adopted few significant changes to the Committee substitute.⁴⁸ The House removed the exemption for private places of employment with fewer than five employees and inserted an exemption for common work areas open to the general public.⁴⁹ The House also inserted an exemption for private clubs, military officer clubs, and noncommissioned officer clubs.⁵⁰ The substitute created an exemption for common work areas open to the general public by appointment only.⁵¹

After a lengthy debate, the House adopted the Committee substitute, as amended, and passed SB 90 by a vote of 118 to 52 on March 22, 2005.⁵² The Senate agreed to the House substitute on March 31, 2005 by a vote of 46 to 4.⁵³ The House sent the bill to the Governor on April 14, 2005, and the Governor signed the bill on May 9, 2005.⁵⁴

Analysis

Several other states have instituted smoking bans.⁵⁵ Courts have upheld the constitutionality of laws and ordinances that prohibit smoking in public places.⁵⁶ For example, in a recent New York case, restaurant and bar owners attempted to fight New York's smoking ban on constitutional grounds and on grounds that the federal law

46. See generally Audio Recording of House Proceedings, Mar. 22, 2005, at http://www.georgia.gov/00/channel_title/0,2094,4802_6107103.html [hereinafter House Audio].

47. *Id.*

48. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (HCSFA), 2005 Ga. Gen. Assem.

49. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (HCSFA), 2005 Ga. Gen. Assem.

50. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (HCSFA), 2005 Ga. Gen. Assem.

51. Compare SB 90 (HCS), 2005 Ga. Gen. Assem., with SB 90 (HCSFA), 2005 Ga. Gen. Assem.

52. Georgia House Voting Record, SB 90 (Mar. 22, 2005).

53. Georgia Senate Voting Record, SB 90 (Mar. 31, 2005).

54. State of Georgia Final Composite Status Sheet, SB 90, Apr. 14, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 90, May, 9 2005 (May 11, 2005).

55. See, e.g., ALA. CODE §§ 22-15A-1 to -10 (2004); FLA. STAT. ANN. §§ 386.201-.225 (2005).

56. See *Craig v. Buncombe County Bd. of Educ.*, 343 S.E.2d 222, 223 (N.C. Ct. App. 1986); *State v. Heidenhain*, 7 So. 621 (La. 1980); *Dutchess/Putnam Rest. & Tavern Ass'n*, 178 F. Supp. 2d. 396 (S.D.N.Y. 2001).

preempted state law.⁵⁷ The plaintiffs argued the federal Occupational Safety and Health Act of 1970 (OSHA) preempted the state smoking ban because environmental smoke fell within OSHA's area of regulation.⁵⁸ The court found that OSHA has declined to regulate environmental smoke because state and local governments were already regulating this area.⁵⁹ The court also upheld the constitutionality of the Act and granted summary judgment to the defendants.⁶⁰ Therefore, it is highly unlikely there will be any constitutional problems with this Act.

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57. *Empire State Rest. & Tavern Ass'n*, 360 F. Supp. 2d 454 (N.D.N.Y. 2005).

58. *Id.* at 458.

59. *Id.* at 459.

60. *Id.* at 463-65.