

9-1-2004

CRIMES AND OFFENSES Offenses Against Public Health and Morals; Enact the "Georgia Smokefree Air Act of 2004"; Provide for the Crime of Smoking in a Motor Vehicle on a State Highway, County Road, or Municipal Street or on Private Property While a Child is Restrained in a Child Passenger Restraining System; Prohibit Smoking in Certain Facilities and Areas; Provide for Definitions; Provide for Exceptions; Provide for Posting of Signs; Provide for Violations, Penalties, and State and Local Government Enforcement and Administration; Provide for Construction; Provide That This Prohibition Shall Be Cumulative to

Recommended Citation

Brandy Ouzts, *CRIMES AND OFFENSES Offenses Against Public Health and Morals; Enact the "Georgia Smokefree Air Act of 2004"; Provide for the Crime of Smoking in a Motor Vehicle on a State Highway, County Road, or Municipal Street or on Private Property While a Child is Restrained in a Child Passenger Restraining System; Prohibit Smoking in Certain Facilities and Areas; Provide for Definitions; Provide for Exceptions; Provide for Posting of Signs; Provide for Violations, Penalties, and State and Local Government Enforcement and Administration; Provide for Construction; Provide That This Prohibition Shall Be Cumulative to Other General or Local Acts, Rules, and Regulations; Repeal a Former Prohibition Against Smoking in Public Places; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes*, 21 GA. ST. U. L. REV. (2004).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol21/iss1/2>

Other General or Local Acts, Rules, and Regulations; Repeal a Former Prohibition Against Smoking in Public Places; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

Brandy Ouzts

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

CRIMES AND OFFENSES

Offenses Against Public Health and Morals: Enact the “Georgia Smokefree Air Act of 2004”; Provide for the Crime of Smoking in a Motor Vehicle on a State Highway, County Road, or Municipal Street or on Private Property While a Child is Restrained in a Child Passenger Restraining System; Prohibit Smoking in Certain Facilities and Areas; Provide for Definitions; Provide for Exceptions; Provide for Posting of Signs; Provide for Violations, Penalties, and State and Local Government Enforcement and Administration; Provide for Construction; Provide That This Prohibition Shall Be Cumulative to Other General or Local Acts, Rules, and Regulations; Repeal a Former Prohibition Against Smoking in Public Places; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

BILL NUMBERS:

SB 507, HB 1138

SUMMARY:

The bills would have prohibited smoking in all enclosed public places in Georgia, including government owned, leased, or operated facilities and enclosed areas in places of employment. The bills also provided that these facilities must display a “No Smoking” sign and may not contain smoking related paraphernalia. Private residences, vehicles, stand-alone bars, some hotel rooms, private and semi-private rooms in nursing homes, retail tobacco stores, and outdoor places of employment would have been exempt from the smoking prohibition. Finally, penalties for violating the smoking ban would have included monetary fines, suspension or revocation of the facility’s business license, and injunctive relief.

History

Senator Don Thomas of the 54th district introduced SB 507 because, as a physician, he has seen many patients die from cancer, heart disease, and other smoking-related illnesses.¹ Cigarettes and tobacco affect both smokers and non-smokers.² Second-hand smoke is the third leading cause of preventable cancers.³ Furthermore, Georgia spends almost \$1 billion each year treating health problems associated with smoking.⁴ The Georgia General Assembly has recognized the health and economic hazards associated with smoking and, with SB 507, attempted to follow in the footsteps of the other states that have adopted similar legislation.⁵

Bill Tracking

Consideration by the Senate

Senators Don Thomas, Kasim Reed, Renee Unterman, Regina Thomas, and Daniel Lee of the 54th, 35th, 45th, 2nd, and 29th districts, respectively, sponsored SB 507.⁶ The Senate first read the bill on February 12, 2004, and the Senate Health and Human Services Committee favorably reported the bill by substitute on February 20, 2004.⁷

The Bill, As Introduced

The current law in Georgia only prohibits smoking in enclosed public elevators, public transportation vehicles, day care homes, and any other public facilities that display “No Smoking” signs.⁸ The bill

1. See Telephone Interview with Sen. Don Thomas, Senate District No. 54 (May 13, 2004) [hereinafter Thomas Interview].

2. See Audio Recording of Senate Proceedings, Mar. 4, 2004 (remarks by Sen. Don Thomas), at http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html [hereinafter Senate Audio].

3. See *id.*; Thomas Interview, *supra* note 1.

4. See Senate Audio, *supra* note 2 (remarks by Sen. Don Thomas).

5. See *id.* (remarks by Sens. Don Thomas, Kasim Reed, and Don Balfour).

6. See SB 507, as introduced, 2004 Ga. Gen. Assem.

7. See State of Georgia Final Composite Status Sheet, SB 507, Feb. 12, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, SB 507, Feb. 20, 2004 (May 19, 2004).

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

would have greatly expanded this list to include most public places.⁹ As introduced, SB 507 would have prohibited smoking in the following places:

(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; (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 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 only modified the original bill slightly.¹¹ It deleted the original bill's prohibition against smoking within 25 feet of an enclosed area where the law prohibits smoking.¹² The substitute also added a provision that would have exempted owners, operators, and managers of facilities from liability when someone

9. Compare SB 507, as introduced, 2004 Ga. Gen. Assem., with 1994 Ga. Laws 650, § 3, at 651 (codified at O.C.G.A. § 16-12-2 (2002)).

10. SB 507, as introduced, 2004 Ga. Gen. Assem.

11. Compare SB 507 (SCS), 2004 Ga. Gen. Assem., with SB 507, as introduced, 2004 Ga. Gen. Assem.

12. *Id.*

unlawfully smoked on their premises provided that they posted “No Smoking” signs, removed ashtrays and other smoking paraphernalia from the premises, and informed violators of the prohibition.¹³

Floor Debate and Amendments

During the floor debate, a number of Senators rose to speak in support of the bill.¹⁴ Senators Don Thomas of the 54th district and Kasim Reed of the 35th district discussed the numerous health problems and the cost of health care attributed to smoking.¹⁵ Senators Steve Thompson of the 33rd district, Regina Thomas of the 2nd district, and Valencia Seay of the 34th district all told personal stories of how smoking had affected their lives.¹⁶ Senators who supported the bill made it known that this bill would not have an adverse affect on businesses, particularly restaurants.¹⁷ Rather, Senator Don Balfour of the 9th district believed that this bill would actually increase business in restaurants by ensuring all restaurants enjoyed a level playing field.¹⁸ Currently some Georgia counties have implemented smoking bans in restaurants, while others have not.¹⁹ However, SB 507 would have banned smoking in all Georgia restaurants, thus putting them on equal footing.²⁰ Senator Balfour noted that in several states with similar legislation, such as Florida and California, smoking bans in restaurants have not hurt business.²¹ He also suggested that the majority of the restaurant community supports such a ban.²²

There was some concern that the bill would not pass if it banned smoking in bars.²³ Therefore, Senator Balfour offered amendment 1 to the Committee substitute.²⁴ This amendment would have exempted

13. *Id.*

14. *See* Senate Audio, *supra* note 2.

15. *See id.* (remarks by Sens. Don Thomas and Kasim Reed).

16. *See id.* (remarks by Sens. Steve Thompson, Regina Thomas, and Valencia Seay).

17. *See id.* (remarks by Sen. Don Balfour).

18. *See id.*

19. *See id.*

20. *See* Senate Audio, *supra* note 2.

21. *See id.*

22. *See id.*

23. *See id.*

24. *See* SB 507 (SFA1), 2004 Ga. Gen. Assem.; Senate Audio, *supra* note 2 (remarks by Sen. Don Balfour).

vehicles and stand-alone bars from the smoking prohibition.²⁵ It defined stand-alone bars as businesses “predominantly or totally [devoted] to serving alcoholic beverages . . . [that] do[] not share a common entryway or common indoor area with[] any other enclosed indoor workplace.”²⁶ Additionally, to qualify as a stand-alone bar, a business would have had to derive “no more than 20 percent of its gross revenue from the sale of food consumed on the licensed premises.”²⁷ Senator Steve Henson of the 41st district sought to alter amendment 1 by increasing the gross revenue limit from 20 to 40%.²⁸ He feared that without his amendment 1a, amendment 1 would have had “the unintended consequence of forcing bars to either charge a lot of money for food or try[ing] not to sell food so that they can get smoking.”²⁹ Senator Randy Hall of the 22nd district also offered an amendment to Senator Balfour’s amendment; amendment 1b replaced “any other enclosed indoor workplace” with “any other enclosed indoor restaurant” in the definition of a stand-alone bar.³⁰ Senator Hall did not want to penalize bars “based upon the type of building in which they were located.”³¹ The Senate adopted amendment 1, as amended by 1b, by a vote of 53 to 0.³²

There was also a concern about the constitutionality of a law that banned smoking in private businesses.³³ As a result of this concern, Senator John Bulloch of the 11th district introduced amendment 3, which would have exempted “private places of employment that have fewer than 15 employees, except that smoking shall be prohibited in any public reception area of such place of employment.”³⁴ amendment 3a, offered by Senator Michael Meyer von Bremen of the 12th district and others, would have changed the number of employees in amendment 3 from 15 to 7.³⁵ However, his amendment would not have applied to restaurants because that would have defeated one of the bill’s purposes—putting all restaurants on a level

25. See SB 507 (SFA1), 2004 Ga. Gen. Assem.

26. *Id.*

27. *Id.*

28. See Failed Senate Floor Amendment to SB 507, introduced by Sen. Steve Henson, Mar. 4, 2004.

29. Senate Audio, *supra* note 2 (remarks by Sen. Steve Henson).

30. See SB 507 (SFA1b), 2004 Ga. Gen. Assem.

31. See Senate Audio, *supra* note 2 (remarks by Sen. Randy Hall).

32. Georgia Senate Voting Record, SB 507 (Mar. 4, 2004).

33. See Senate Audio, *supra* note 2 (remarks by Sen. John Bulloch).

34. SB 507 (SFA3), 2004 Ga. Gen. Assem.

35. See SB 507 (SFA3a), 2004 Ga. Gen. Assem.

playing field.³⁶ The Senate adopted amendment 3, as altered by 3a, by a vote of 43 to 10.³⁷

Senator Ross Tolleson of the 18th district offered amendment 5 to exempt tobacco businesses, such as tobacco manufacturers, from the smoking prohibition.³⁸ He stated that tobacco product manufacturers and employees support the product they make, and thus, they should be able to smoke on their lunch break.³⁹ However, a narrow majority of the Senate did not share Senator Tolleson's concern, and the amendment failed by a vote of 27 to 26.⁴⁰

Senators proposed several other amendments, but the sponsors of these amendments withdrew them before the Senate could consider them (i.e., amendments 2, 3b, 4, and 6).⁴¹ The Senate adopted the Committee substitute, as amended, and then passed SB 507 by a vote of 45 to 7.⁴²

Consideration by the House

The House first read SB 507 on March 9, 2004.⁴³ The Speaker assigned the bill to the House Governmental Affairs Committee, but the bill never made it out of committee.⁴⁴ Some suggest that this is partially because the Committee chairman, Alan Powell, is a smoker. However, Mr. Powell says the bill failed because the bill constitutes government intrusion into private business.⁴⁵ In an attempt to revive the bill, the Senate Health and Human Services Committee tacked SB 507 onto HB 1138, a bill that would have banned smoking in vehicles with children.⁴⁶ The Senate Committee favorably reported HB 1138 by substitute on March 24, 2004.⁴⁷ The portion of the substitute that

36. *See id.*; Senate Audio, *supra* note 2 (remarks by Sen. Michael Meyer von Bremen).

37. Georgia Senate Voting Record, SB 507 (Mar. 4, 2004).

38. *See* Failed Senate Floor Amendment to SB 507, introduced by Sen. Ross Tolleson, Mar. 4, 2004.

39. *See* Senate Audio, *supra* note 2 (remarks by Sen. Ross Tolleson).

40. Georgia Senate Voting Record, SB 507 (Mar. 4, 2004).

41. *See* Withdrawn Senate Floor Amendments to SB 507, introduced by Sens. Preston Smith, Renee Unterman, and Steve Thompson, Mar. 4, 2004; Senate Audio, *supra* note 2 (remarks by Sens. Preston Smith, Renee Unterman, and Steve Thompson).

42. Georgia Senate Voting Record, SB 507 (Mar. 4, 2004).

43. State of Georgia Final Composite Status Sheet, SB 507, Mar. 9, 2004 (May 19, 2004).

44. *See id.*

45. Clint Williams & Carlos Campos, *Smoking Ban Isn't Toast Yet: Powerful Foe May Be Unable to Block Vote*, ATLANTA J. CONST., Mar. 25, 2004, at E1, available at 2004 WL 73418615.

46. *See* HB 1138 (SCS), 2004 Ga. Gen. Assem.

47. *See* State of Georgia Final Composite Status Sheet, HB 1138, Mar. 24, 2004 (May 19, 2004).

the Committee tacked onto HB 1138 was substantially the same as SB 507 as passed in the Senate.⁴⁸ The Senate amended the Committee substitute on the floor to exempt nursing homes and airports from the smoking ban because nursing homes must comply with federal law and international airports are subject to different rules.⁴⁹

By tacking SB 507 onto HB 1138, the legislation by-passed the House Committee and went straight to the House floor.⁵⁰ Although Senator Don Thomas, SB 507's author, believed that the amended HB 1138 would have enough votes to pass in the House, the Speaker never called for a vote on the bill.⁵¹ However, Senator Thomas feels confident that the legislation will pass in the next session because the public and the General Assembly have strongly supported the bill.⁵²

Analysis

Several other states have implemented non-smoking legislation.⁵³ These state laws, and most municipal ordinances, have survived constitutional challenges.⁵⁴ For example, a New York court upheld a county regulation prohibiting smoking in public places when challenged on equal protection grounds; the court found that the regulation was rationally related to the goal of protecting the public's health, particularly with regard to second-hand smoke.⁵⁵ Other courts have held that prohibiting smoking in public places does not violate a person's personal liberty or violate other constitutional rights because the laws do not make smoking itself an offense.⁵⁶ Furthermore, the Constitution does not provide that individuals have the right to smoke

48. Compare HB 1138 (SCS), 2004 Ga. Gen. Assem., with SB 507 (SCSFA), 2004 Ga. Gen. Assem.

49. See HB 1138 (SCSFA), 2004 Ga. Gen. Assem.; Thomas Interview, *supra* note 1.

50. See State of Georgia Final Composite Status Sheet, HB 1138, Mar. 9, 2004 (May 19, 2004).

51. See Thomas Interview, *supra* note 1; State of Georgia Final Composite Status Sheet, SB 507, Apr. 7, 2004 (May 19, 2004).

52. See Georgia Senate Voting Record, SB 507 (Mar. 4, 2004); Thomas Interview, *supra* note 1.

53. See, e.g., ALA. CODE §§ 22-15A-1 to -10 (2004); FLA. STAT. ANN. §§ 386.201 to -.2125 (West 2004); N.Y. PUB. HEALTH LAW §§ 1399-n to -x (Consol. 2004).

54. See Alan Stephens, J.D., Annotation, *Validity, Construction, and Application of Nonsmoking Regulations*, 65 A.L.R. 4th 1205 (2004); Thomas Interview, *supra* note 1.

55. *Dutchess/Putnam Rest. & Tavern Ass'n v. Putnam County Dep't of Health*, 178 F. Supp. 2d 396, 405 (S.D.N.Y. 2001).

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, 621 (La. 1890).

in public places.⁵⁷ Additionally, courts have also upheld no-smoking laws when challenged under the First Amendment and on due process grounds.⁵⁸ For these reasons, several Georgia Senators do not anticipate any constitutional problems with this bill.⁵⁹

Brandy Ouzts

57. *Craig*, 343 S.E.2d at 223.

58. *See Dutchess/Putnam Rest. & Tavern Ass'n*, 178 F. Supp. 2d at 406; *Swanson v. City of Tulsa*, 633 P.2d 1256, 1258 (Okla. Crim. App. 1981).

59. *See Thomas Interview*, *supra* note 1; *Senate Audio*, *supra* note 2 (remarks by Sen. Don Balfour).