**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3113**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Rutherford, King, Gunn and McEachern

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Summary: Smoking

**HISTORY OF LEGISLATIVE ACTIONS**

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12/9/2008 House Referred to Committee on **Judiciary**

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1/28/2009 House Member(s) request name added as sponsor: McEachern

**VERSIONS OF THIS BILL**

[12/9/2008](file:///p:\pprever\2009-10\3113_20081209.docx)

**A** **BILL**

TO AMEND CHAPTER 95 OF TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE “CLEAN INDOOR AIR ACT OF 1990”, SO AS TO EXTEND THE SMOKING PROHIBITION PROVIDED FOR IN THE ACT TO RESTAURANTS, BARS, LOUNGE AREAS, AND RECREATIONAL FACILITIES; TO SPECIFY THAT SMOKING IS PERMITTED IN PRIVATE HOMES AND AUTOMOBILES, HOME‑BASED BUSINESSES, PRIVATE FUNCTIONS IN INDOOR AREAS, HOTEL ROOMS DESIGNATED AS SMOKING ROOMS, SPECIALTY TOBACCO STORES, TOBACCO MANUFACTURERS, CIGAR BARS, AND PRIVATE CLUBS AND TO PROVIDE THAT A PROPRIETOR OF AN ESTABLISHMENT HAS THE RIGHT TO PROHIBIT SMOKING IN HIS ESTABLISHMENT WHICH WOULD OTHERWISE BE PERMITTED BY THIS CHAPTER; TO PROVIDE THAT THE POSTING OF DESIGNATED SMOKING AREA SIGNS IS NOT REQUIRED FOR PRIVATE HOMES AND AUTOMOBILES OR HOME‑BASED BUSINESSES AND TO PROVIDE AN EXCEPTION; TO DELETE THE MAXIMUM CRIMINAL PENALTY FROM A FINE OF TWENTY‑FIVE DOLLARS AND TO PROVIDE A MINIMUM CRIMINAL PENALTY OF A FINE OF NOT LESS THAN FIFTY DOLLARS; TO PROVIDE THAT A PERSON SMOKING IN A RESTAURANT, BAR, OR LOUNGE MUST BE ASKED TO EXTINGUISH ALL LIGHTED TOBACCO PRODUCTS AND IF THE PERSON REFUSES TO DO SO, THE PERSON MUST BE ASKED TO LEAVE THE PREMISES; TO PROHIBIT A PERSON OR EMPLOYER FROM RETALIATING AGAINST ANOTHER PERSON OR AN EMPLOYEE OR CUSTOMER FOR FILING A COMPLAINT FOR OR SEEKING PROSECUTION OF A VIOLATION OF THIS CHAPTER; AND TO PROVIDE THAT THE CLEAN INDOOR AIR ACT MUST NOT BE CONSTRUED TO PERMIT SMOKING WHERE IT IS OTHERWISE PROHIBITED BY REGULATION OF A STATE OR LOCAL AGENCY, INCLUDING A LOCAL ORDINANCE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 95, Title 44 of the 1976 Code is amended to read:

“CHAPTER 95

Clean Indoor Air Act

Section 44‑95‑10. This chapter may be cited as the ‘Clean Indoor Air Act of 1990’.

Section 44‑95‑15. As used in this chapter:

(1) ‘Bar’ and ‘lounge area’ mean an establishment open and accessible to the public 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.

(2) ‘Government buildings’ means buildings or portions of buildings that are leased or operated under the control of the State or any of its political subdivisions, except those buildings or portions of buildings that are leased to other organizations or corporations.

(3) ‘Private function’ means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining which is not intended to be open to the public and for which membership or specific invitation is a prerequisite to entry.

(4) ‘Proprietor’ means a person who owns, leases, operates, manages, or otherwise has control of any establishment, building, or enclosed area. The term ‘proprietor’ includes corporations, associations, or partnerships, as well as individuals.

(5) ‘Recreational facility’ means an enclosed, indoor area open to the general public for any recreational purpose including, but not limited to, an indoor area used as a bowling alley, dance hall, gaming facility, poolroom, skating rink, video game facility, senior citizen recreational facility, stadium, or arena.

(6) ‘Restaurant’ means any eating establishment open and accessible to the public including, but not limited to, fast food enterprises, coffee shops, cafeterias, and other similar entities licensed by the Department of Health and Environmental Control, including a bar or lounge area within a restaurant.

(7) ‘Smoke’ or ‘smoking’ means the inhaling, exhaling, burning, carrying, or holding a lighted cigar, cigarette, pipe, or a tobacco or other product in any manner or form.

(8) ‘Specialty tobacco store’ means a retail store utilized primarily for the sale of tobacco products and accessories in which the sale of other products is merely incidental.

(9) ‘Theater’ means an indoor facility or auditorium open to the public that is primarily used or designed for the purpose of exhibiting a motion picture, stage production, musical recital or concert, dance performance, lecture, or another similar performance.

Section 44‑95‑20. In order to protect the public from the detrimental effects of secondhand smoke, it is unlawful for a person to smoke or possess lighted smoking material in any form in the following public indoor areas except where a smoking area is designated as provided for in this chapter:

(1) public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held, including libraries. Smoking is permitted in private offices and teacher lounges ~~which~~ that are not adjacent to classrooms or libraries ~~are excluded.~~; However, ~~this exclusion does not apply if the offices and lounges are included specifically in a directive by the local school board.~~ this ~~section~~ item does not prohibit school district boards of trustees, district supertintendents, and principals or chief administrators of a school from adopting smoking restrictions that are more stringent than the requirements of this item, including prohibiting smoking in private offices and teacher lounges or in areas that are not enclosed and are located on the public school or preschool campus or from providing for a smoke‑free campus;

(2) all other indoor facilities providing children’s services to the extent that smoking is prohibited in the facility by federal law and all other ~~child day care~~ childcare facilities, as defined in Section ~~20‑7‑2700~~ 63‑13‑20, ~~which~~ that are licensed pursuant to ~~Subarticle 11, Article 13, Chapter 7 of Title 20~~ Chapter 13, Title 63;

(3) health care facilities, as defined in Section 44‑7‑130, except where smoking areas are designated in employee break areas. However, nothing in this chapter prohibits or precludes a health care facility from being smoke free;

(4) government buildings, except health care facilities as provided for in this section, except that smoking may be allowed in enclosed private offices and designated areas of employee break areas. However, smoking policies in the State Capitol and Legislative Office Buildings must be determined by the office of government having control over its respective area of the buildings~~. ‘Government buildings’ means buildings or portions of buildings which are leased or operated under the control of the State or any of its political subdivisions, except those buildings or portions of buildings which are leased to other organizations or corporations~~;

(5) elevators;

(6) public transportation vehicles, except for taxicabs; ~~and~~

(7) ~~arenas and auditoriums of public~~ theaters ~~or public performing art centers.~~ and recreational facilities; however, smoking areas may be designated in foyers, lobbies, or other common areas, and smoking is permitted as part of a legitimate theatrical performance; and

(8) restaurants, bars, and lounge areas.

Section 44‑95‑25. (A) Except as prohibited pursuant to Section 44‑95‑20, smoking is permitted in all other public indoor and outdoor areas and it is specifically permitted in:

(1) private homes, private residences, private vehicles, and home‑based businesses, unless a private home, private residence, private vehicle, or home‑based business is used in conjunction with a childcare facility, as defined in Section 63‑13‑20, or a health care facility, as defined in Section 44‑7‑130;

(2) an indoor area where private functions are being held when the arrangements for the private functions are under the control of the sponsor of the function;

(3) a hotel or motel room clearly designated as a ‘smoking’ room as long as smoking rooms in that hotel or motel do not exceed twenty‑five percent of the total number of rooms that the hotel or motel offers as accommodations to the public;

(4) specialty tobacco stores;

(5) tobacco manufacturers;

(6) cigar bars; and

(7) private clubs.

(B) This chapter does not prevent and must not be construed to limit the right of a proprietor of an establishment in which smoking is permitted under this chapter from prohibiting smoking in the establishment, in a private office or work area in the establishment, or on the premises of the establishment.

Section 44‑95‑30. (A) In areas where smoking is permitted ~~in~~ on premises or in vehicles pursuant to Section 44‑95‑20, the owner, manager, or agent in charge of the premises or vehicle ~~referenced in Section 44‑95‑20~~ shall conspicuously display signs designating smoking and nonsmoking areas ~~alike~~, except that signs are not required in private offices.

(B) This section must not be construed to require the posting of signs on private homes, private residences, private vehicles, or home‑based businesses unless the private home, private residence, private vehicle, or home‑based business is used in conjunction with a childcare facility or a health care facility where smoking is authorized in designated areas pursuant to Section 44‑95‑20.

Section 44‑95‑40. In complying with the provisions of Section ~~44‑95‑30~~ 44‑95‑20 that allow smoking in designated areas, the owner, manager, or agent in charge of the premises shall make every reasonable effort to prevent designated smoking areas from impinging upon designated smoke‑free areas by the use of existing physical barriers and ventilation systems.

Section 44‑95‑50. A person who violates Section 44‑95‑20, 44‑95‑30, or 44‑95‑40 ~~of this chapter~~ is guilty of a misdemeanor and, upon conviction, must be fined not less than ~~ten~~ fifty dollars ~~nor more than twenty‑five dollars~~.

Section 44‑95‑55. (A) A person in charge of, or a designated agent or employee of, a restaurant, bar, or lounge area who observes a person smoking in the restaurant, bar, or lounge area shall ask the person to extinguish all lighted tobacco products. If the person continues smoking, the person in charge of, or the designated agent or employee of, the restaurant, bar, or lounge area shall ask the person to leave the premises.

(B) A person who refuses to extinguish all lighted tobacco products or refuses to leave the premises of a restaurant, bar, or lounge area when asked to do so pursuant to subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined as provided for in Section 44‑95‑50.

Section 44‑95‑60. No person in this State is authorized to require any other person to submit to any form of testing to determine whether or not the person has nicotine or other tobacco residue in his body.

Section 44‑95‑70. A person or employer must not retaliate against another person or an employee, applicant for employment, or customer for filing a complaint or report about or seeking prosecution of a violation of this chapter.

Section 44‑95‑80. This chapter must not be construed to permit smoking where it is otherwise prohibited by a rule or regulation of a state or local agency or another applicable law, including an ordinance adopted by a local governing body.”

SECTION 2. This act takes effect upon approval by the Governor.

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