

Fifty-eighth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1408

Introduced by

Representatives Kingsbury, Herbel

Senator Nichols

1 A BILL for an Act to create and enact a new section to chapter 23-12 of the North Dakota  
2 Century Code, relating to smoking restrictions in nonpublic workplaces; to amend and reenact  
3 sections 23-12-09, 23-12-10, 23-12-10.1, 23-12-10.2, and 23-12-11 of the North Dakota  
4 Century Code, regarding restrictions on smoking in places of public access, publicly owned  
5 buildings or offices, and nonpublic workplaces; and to provide a penalty.

### 6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1. AMENDMENT.** Section 23-12-09 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **23-12-09. Smoking in places of public ~~assembly~~ access, publicly owned**  
10 **buildings or offices, and nonpublic workplaces - Definitions.** In sections 23-12-09 through  
11 23-12-11, unless the context or subject matter otherwise requires:

12 1. "Place of public ~~assembly~~ access" means any enclosed indoor place of business  
13 or service-related activity, whether publicly or privately owned and whether or not  
14 operated for profit, which the public uses or to which individuals not employed at  
15 the place have general and regular access, including:

16 a. ~~Enclosed theaters; auditoriums; gymnasiums; elevators; libraries; vehicles~~  
17 ~~used in public transportation; rooms in which persons are confined as a~~  
18 ~~matter of health care, including the waiting room, restroom, lobby, or hallway~~  
19 ~~of a hospital, nursing home, rest home, or other health care institution or~~  
20 ~~facility, and waiting areas in all public transportation terminals. Elevators,~~  
21 restrooms, means of transportation or common carrier waiting rooms,  
22 restaurants, cafes, cafeterias, shopping malls, retail stores, grocery stores,  
23 arcades, libraries, theaters, concert halls, museums, art galleries,

1                    planetariums, historical sites, auditoriums, arenas, laundromats, and sports or  
2                    fitness facilities;

- 3                    b. ~~Any building or other enclosed structure owned or leased by the state, its~~  
4                    ~~agencies, or political subdivisions, and all public education buildings.~~

5                    Common areas of nursing homes, hospitals, resorts, hotels, motels, bed and  
6                    breakfast facilities, and other similar lodging facilities, including the lobbies,  
7                    hallways, elevators, cafeterias, other designated dining areas, and restrooms  
8                    of any of these;

- 9                    c. ~~Each portion of a building or enclosed structure that is not included in this~~  
10                    ~~subsection if it has the seating capacity for fifty or more persons and is~~  
11                    ~~available to the public, including restaurants, food service establishments,~~  
12                    ~~dining rooms, cafes, cafeterias, or other rooms used primarily for the service~~  
13                    ~~of food, regardless of whether the establishments serve alcoholic beverages.~~

14                    ~~The term does not include private, enclosed rooms of residence, establishments~~  
15                    ~~licensed primarily or exclusively to sell alcoholic beverages for consumption on the~~  
16                    ~~premises, including private and fraternal organizations, or areas used for the~~  
17                    ~~service of alcoholic beverages and which are physically separate rooms within food~~  
18                    ~~service establishments.~~ Child care facilities subject to licensure by the department  
19                    of human services, including those operated in private homes when any child  
20                    cared for under that license is present;

- 21                    d. Common areas of multiunit residential buildings, including apartments,  
22                    duplexes, and condominiums, regardless of whether they are security  
23                    buildings;

- 24                    e. Public and private elementary or secondary school buildings and educational  
25                    facilities or the property on which those facilities are located; and

- 26                    f. Any area at which the owner or manager of the area has posted a  
27                    conspicuous sign stating "no smoking", "thank you for not smoking", or similar  
28                    statement.

- 29                    2. ~~"Smoke drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or~~  
30                    ~~other smoking equipment in a place of public assembly outside a designated~~  
31                    ~~smoking area.~~ "Publicly owned building or office" means any enclosed indoor

1 place or portion of a place owned, leased, or rented by any state or political  
2 subdivision, or by any agency supported by appropriation of, or by contracts or  
3 grants from, funds derived from the collection of taxes.

- 4 3. "Smoking" means ~~carrying a~~ the possession of any lighted cigar, cigarette, pipe, or  
5 any other lighted tobacco product or lighted smoking equipment.

6 **SECTION 2. AMENDMENT.** Section 23-12-10 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **23-12-10. Designation of smoking areas** **Places of public access and publicly**  
9 **owned buildings or offices - Smoking restrictions - Exceptions.**

- 10 1. Smoking is not permitted outside of designated smoking areas in places of public  
11 assembly as provided in this section. Smoking areas may be designated only by  
12 proprietors of privately owned buildings or by public officials having general  
13 supervisory responsibility for government buildings. No smoking area may be  
14 designated in a place in which smoking is prohibited by the state fire marshal. A  
15 sign must be posted in any designated smoking area which states "Designated  
16 Smoking Area" or words to that effect prohibited in every place of public access  
17 and publicly owned building or office.

- 18 2. Subsection 1 does not apply to:

- 19 a. Any place of public access owned, rented, leased, or otherwise operated by a  
20 social, fraternal, or religious organization when that place is being used solely  
21 by the organization members or their guests or families;  
22 b. Any place of public access rented or leased for private functions from which  
23 the general public is excluded and arrangements for the function are under  
24 the control of the function sponsor;  
25 c. Any workplace smoking area as provided in section 3 of this Act;  
26 d. Any area within a place of public access which is not commonly open to the  
27 public and which is part of an owner-operated business having no employee  
28 other than the owner-operator;  
29 e. Any guest room in a hotel, motel, bed and breakfast facility, and other similar  
30 lodging facility;

- 1           f. Any establishment in a place of public access which is licensed primarily or  
2           exclusively to sell alcoholic beverages for consumption on the premises;  
3           g. Any private club in a place of public access;  
4           h. Any separate enclosed smoking area in a place of public access or a publicly  
5           owned building or office which is:  
6               (1) Located in the passenger terminal of an international airport or a food  
7               establishment;  
8               (2) Vented directly to the outdoors; and  
9               (3) Certified, by a mechanical engineer licensed by the state, to prevent the  
10           drift of any smoke to any nonsmoking area; and  
11           i. Adults smoking in designated smoking areas in private schools or educational  
12           facilities during nonschool hours.

13           ~~Except as otherwise provided, designated smoking areas in a place of public~~  
14 ~~assembly may not occupy more than fifty percent of the total area available to the public and~~  
15 ~~must be situated to minimize smoke drift. The proprietor of a food establishment with the~~  
16 ~~seating capacity for fifty or more persons may temporarily, during the course of daily business,~~  
17 ~~expand the designated smoking area beyond fifty percent of the total available area if the~~  
18 ~~smoking area becomes fully occupied and the additional space needed for the expansion is~~  
19 ~~vacant or available.~~

20           **SECTION 3.** A new section to chapter 23-12 of the North Dakota Century Code is  
21 created and enacted as follows:

22           **Nonpublic workplaces - Smoking restrictions.**

- 23           1. An employer who operates a workplace that is neither a place of public access nor  
24           a publicly owned building or office shall establish or negotiate through the collective  
25           bargaining process a written smoking policy before September 1, 2003, or within  
26           thirty days after becoming an employer subject to this section. If the employer  
27           employs fewer than ten full-time employees on a regular basis, the smoking policy  
28           need not be in writing.  
29           2. The smoking policy must:  
30               a. Prohibit smoking in the workplace;  
31               b. Restrict smoking to designated enclosed smoking areas; or

1           c. Permit smoking in designated unenclosed smoking areas if the layout of the  
2           workplace prevents smoke in the work areas of all nonsmoking employees in  
3           the workplace and at least three-fourths of the employees in the workplace  
4           agree.

5           3. If the state department of health determines the smoking areas designated under  
6           subdivision b or c of subsection 2 do not effectively prevent smoke in the work  
7           areas of nonsmoking employees, the department shall require that the employer  
8           prohibit smoking in the workplace, through a hearing procedure under section  
9           23-12-10.2.

10          **SECTION 4. AMENDMENT.** Section 23-12-10.1 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12          **23-12-10.1. Smoking violations - Responsibility of ~~proprietors~~ owners.** The  
13 ~~proprietor~~ owner or other person with general supervisory responsibility over a place of public  
14 assembly shall post an appropriate sign in any designated smoking area where smoking is  
15 prohibited under sections 23-12-09 through 23-12-11 who observes an individual smoking in  
16 apparent violation of these sections shall request the individual to extinguish the tobacco  
17 product or smoking equipment. If the individual fails to comply, the owner or other person with  
18 general supervisory responsibility shall ask the individual to leave the premises.

19          **SECTION 5. AMENDMENT.** Section 23-12-10.2 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21          **23-12-10.2. Complaints and enforcement - City and county ordinances and home**  
22 **rule charters.**

23          1. The state department of health is designated to receive reports or complaints from  
24 any person regarding violations of sections 23-12-09 through 23-12-11. ~~State~~  
25 ~~agencies~~ A state agency with statutory jurisdiction over ~~places of public assembly~~  
26 a publicly owned building or office may enforce sections 23-12-09 through  
27 23-12-11. These agencies include the fire marshal department, state department  
28 of health, department of human services, and office of management and budget.  
29 The agencies may mutually agree as to the manner in which enforcement is to be  
30 accomplished and may ~~amend their~~ adopt administrative rules to ensure  
31 compliance with sections 23-12-09 through 23-12-11. Authorities other than state

1 agencies may conduct inspections and report violations to state agencies, ~~or~~ and  
2 may enforce smoking policies, rules, or ordinances more stringent than those  
3 contained in sections 23-12-09 through 23-12-11.

4 2. A city or county ordinance, a city or county home rule charter, or an ordinance  
5 adopted under a home rule charter may not provide for less stringent provisions  
6 than those provided under sections 23-12-09 through 23-12-11. This subsection  
7 does not preclude any city or county from enacting any ordinance containing penal  
8 language when otherwise authorized to do so by law.

9 **SECTION 6. AMENDMENT.** Section 23-12-11 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **23-12-11. Penalty.** ~~Any proprietor or other person with general supervisory~~  
12 ~~responsibility over a place of public assembly who willfully fails to comply with sections~~  
13 ~~23-12-09 through 23-12-11~~ A person who violates section 23-12-10 or section 3 of this Act is  
14 subject to a fine not to exceed one hundred dollars per for the first violation. A person who  
15 violates section 23-12-10 or section 3 of this Act is subject to a fine of not less than one  
16 hundred dollars and not more than five hundred dollars for the second and each additional  
17 violation.