

Fifty-ninth
Legislative Assembly
of North Dakota

Introduced by

Legislative Council

(Criminal Justice Committee)

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, relating to 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;

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

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

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

Nonpublic workplaces - Smoking restrictions.

1. An employer who operates a workplace that is neither a place of public access nor a publicly owned building or office shall establish or negotiate through the collective bargaining process a written smoking policy before September 1, 2005, or within thirty days after becoming an employer subject to this section. If the employer employs fewer than ten full-time employees on a regular basis, the smoking policy need not be in writing.
2. The smoking policy must:
 - a. Prohibit smoking in the workplace;
 - 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.