

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2164

Introduced by

Senators Kilzer, Fischer, Lindaas

Representatives Kaldor, Kingsbury

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 the posting of no smoking signs; and to amend and reenact sections
3 23-12-09 and 23-12-10 of the North Dakota Century Code, relating to smoke-free
4 environments.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

8 **23-12-09. Smoking in public places and places of employment - Definitions.** In
9 sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

- 10 1. "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02
11 that is devoted to the serving of alcoholic beverages for consumption by guests on
12 the premises and in which the serving of food is only incidental to the consumption
13 of those beverages. ~~The term includes a bar located within a hotel, bowling center,~~
14 ~~or restaurant that is not licensed primarily or exclusively to sell alcoholic beverages~~
15 ~~if the bar is in a separately enclosed area.~~
- 16 2. "Business" means a sole proprietorship, partnership, association, joint venture,
17 corporation, or other business entity, either for profit or not for profit, including retail
18 establishments where goods or services are sold and professional corporations
19 and other entities where professional services are delivered.
- 20 3. "Employee" means an individual who is employed by an employer in consideration
21 for direct or indirect monetary wages or profit, or an individual who volunteers
22 services for an employer.
- 23 4. "Employer" means an individual, business, or the state and its agencies and
24 political subdivisions that employs the services of one or more individuals.

- 1 5. "Enclosed area" means all space between a floor and ceiling that is enclosed on all
2 sides by solid walls or windows, exclusive of doorways, which extend from the floor
3 to the ceiling.
- 4 6. "Health care facility" means any office or institution providing health care services,
5 including a hospital; clinic; ambulatory surgery center; outpatient care facility;
6 nursing, basic, or assisted living facility; and laboratory.
- 7 7. "Health care services" include medical, surgical, dental, vision, chiropractic, and
8 pharmaceutical services.
- 9 8. "Place of employment" means an area under the control of a public or private
10 employer that employees normally frequent during the course of employment,
11 including work areas, auditoriums, classrooms, conference rooms, elevators,
12 employee cafeterias, employee lounges, hallways, meeting rooms, private offices,
13 restrooms, and stairs.
- 14 9. "Public place" means an enclosed area to which the public has access or in which
15 the public is permitted, including a publicly owned building or office, and enclosed
16 areas available to and customarily used by the general public in businesses and
17 nonprofit entities patronized by the public, including bars; bingo facilities; child care
18 facilities subject to licensure by the department of human services, including those
19 operated in private homes when any child cared for under that license is present;
20 convention facilities; educational facilities, both public and private; facilities
21 primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital,
22 or other similar performance; financial institutions; health care facilities; hotels and
23 motels; laundromats; any common areas in apartment buildings, condominiums,
24 mobile home parks, retirement facilities, nursing homes, and other multiple-unit
25 residential facilities; museums, libraries, galleries, and aquariums; polling places;
26 professional offices; public transportation facilities, including buses and taxicabs,
27 and ticket, boarding, and waiting areas of public transit depots; reception areas;
28 restaurants; retail food production and marketing establishments; retail service
29 establishments; retail stores; rooms, chambers, places of meeting or public
30 assembly, including school buildings; service lines; shopping malls; sports arenas,

including enclosed places in outdoor arenas; theaters; truckstops; and waiting rooms.

10. "Publicly owned building or office" means a place owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.

11. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, including coffee shops, cafeterias, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

12. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

13. "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

14. "Smoking" means possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted tobacco product in any manner or in any form.

15. "Sports arena" means any facility or area, whether enclosed or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

~~16. "Truckstop" means a roadside service station and restaurant that caters to truckdrivers.~~

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

23-12-10. Smoking restrictions - Exceptions - Retaliation - Application.

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:

- 1 a. Public places; and
- 2 b. Places of employment.
- 3 2. The following areas are exempt from subsection 1:
- 4 a. Private residences, except when operating as a child care facility subject to
- 5 licensure by the department of human services and when any child cared for
- 6 under that license is present in that facility.
- 7 b. Hotel and motel rooms, and other places of lodging, that are rented to guests
- 8 and are designated as smoking rooms.
- 9 c. Retail tobacco stores, provided that smoke from these places does not
- 10 infiltrate into areas where smoking is prohibited under this section.
- 11 d. Outdoor areas of places of employment, except a sports arena.
- 12 e. Any area that is not commonly accessible to the public and which is part of an
- 13 owner-operated business having no employee other than the owner-operator,
- 14 provided that smoke from these places does not infiltrate into areas where
- 15 smoking is prohibited under this section.
- 16 f. ~~Bars.~~
- 17 g. ~~Any place of public access rented or leased for private functions from which~~
- 18 ~~the general public and children are excluded and arrangements for the~~
- 19 ~~function are under the control of the function sponsor.~~
- 20 h. ~~Separately enclosed areas in truckstops which are accessible only to adults.~~
- 21 3. Smoking as part of a traditional American Indian spiritual or cultural ceremony is
- 22 not prohibited.
- 23 4. No person or employer shall discharge, refuse to hire, or in any manner retaliate
- 24 against an employee, applicant for employment, or other person because that
- 25 person asserts or exercises any rights afforded by this section or reports or
- 26 attempts to prosecute a violation of this section. An employee who works in a
- 27 setting where an employer allows smoking does not waive or otherwise surrender
- 28 any legal rights the employee may have against the employer or any other party.
- 29 5. This section may not be interpreted or construed to permit smoking where it is
- 30 otherwise restricted by other applicable laws.

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

3 **Posting of signs.** A sign must be posted in every public place and place of
4 employment where smoking is prohibited by section 23-12-10 clearly indicating that smoking is
5 prohibited.