

Sixty-third  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1292**

Introduced by

Representatives Ruby, Weisz, Delmore

Senators Klein, Laffen, Sinner

1 A BILL for an Act to amend and reenact sections 23-12-09 and 23-12-10.4 of the North Dakota  
2 Century Code, relating to smoking in public places and places of employment and the  
3 responsibility of proprietors.

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

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

7 **23-12-09. Smoking in public places and places of employment - Definitions.**

8 In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise  
9 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 the  
12 premises and in which the serving of food is only incidental to the consumption of  
13 those beverages. The term includes a bar located within a hotel, bowling center,  
14 restaurant, or other establishment that is not licensed primarily or exclusively to sell  
15 alcoholic beverages.
- 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 and  
19 other entities where professional services are delivered.
- 20 3. "E-cigarette" means any electronic oral device, such as one composed of a heating  
21 element and battery or electronic circuit, or both, which provides a vapor of nicotine or  
22 any other substances, and the use or inhalation of which simulates smoking. The term  
23 shall include any such device, whether manufactured, distributed, marketed, or sold as  
24 an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor.

- 1       4. "Employee" means an individual who is employed by an employer in consideration for  
2       direct or indirect monetary wages or profit, or an individual who volunteers services for  
3       an employer.
- 4       5. "Employer" means an individual, business, or private club, including a municipal  
5       corporation or trust, or the state and its agencies and political subdivisions that  
6       employs the services of one or more individuals.
- 7       6. "Enclosed area" means all space between a floor and ceiling that has thirty-three  
8       percent or more of the surface area of its perimeter bounded by opened or closed  
9       walls, windows, or doorways. A wall includes any physical barrier regardless of  
10      whether it is opened or closed, temporary or permanent, or contains openings of any  
11      kind, and includes retractable dividers and garage doors.
- 12      7. "Entrance" means an exterior door that actuates to the left or right which allows  
13      access to a public place.
- 14      8. "Health care facility" means any office or institution providing health care services or  
15      treatment of diseases, whether physical, mental or emotional, or other medical,  
16      physiological or psychological conditions. Some examples of health care facilities  
17      include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight  
18      control clinics; nursing homes; homes for the aging or chronically ill; nursing, basic,  
19      long-term, or assisted living facilities; laboratories; and offices of any medical  
20      professional licensed under title 43, including all specialties and subspecialties in  
21      those fields. This definition shall include all waiting rooms, hallways, private rooms,  
22      semiprivate rooms, wards within health care facilities, and any mobile or temporary  
23      health care facilities.
- 24      ~~8-9.~~ "Health care services" means services provided by any health care facility. Some  
25      examples of health care services are medical, surgical, dental, vision, chiropractic,  
26      psychological, and pharmaceutical services.
- 27      ~~9-10.~~ "Place of employment" means an area under the control of a public or private  
28      employer, including work areas, auditoriums, classrooms, conference rooms,  
29      elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private  
30      offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a

place of employment unless it is used as a licensed child care, adult day care, or health care facility.

~~40.11.~~ "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels, including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as town cars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores, including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.

~~41.12.~~ "Publicly owned building, vehicle, or office" means a place or vehicle 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.

~~42.13.~~ "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. Some examples of restaurants include coffee shops, cafeterias, sandwich stands, 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.

1 ~~13.14.~~ "Shopping mall" means an enclosed public walkway or hall area that serves to connect  
2 retail or professional businesses.

3 ~~14.15.~~ "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar,  
4 cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for  
5 inhalation, in any manner or in any form. Smoking also includes the use of an e-  
6 cigarette which creates a vapor, in any manner or any form, or the use of any oral  
7 smoking device for the purpose of circumventing the prohibition of smoking in this Act.

8 ~~15.16.~~ "Sports arena" means an indoor or outdoor place where members of the public  
9 assemble to engage in physical exercise, participate in athletic competition, or witness  
10 sports or other events. Some examples of sports arenas include sports pavilions,  
11 stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice  
12 rinks, and bowling centers.

13 **SECTION 2. AMENDMENT.** Section 23-12-10.4 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **23-12-10.4. Responsibility of proprietors.**

16 The owner, operator, manager, or other person in control of a public place or place of  
17 employment where smoking is prohibited by this Act shall:

- 18 1. Clearly and conspicuously post no smoking signs or the international no smoking  
19 symbol in that place.
- 20 2. Clearly and conspicuously post at every entrance to that place a sign stating that  
21 smoking is prohibited.
- 22 3. ~~Clearly and conspicuously post on every vehicle that constitutes a place of~~  
23 ~~employment under this Act at least one sign, visible from the vehicle's exterior, stating~~  
24 ~~that smoking is prohibited.~~

- 25 4. Remove all ashtrays from any area where smoking is prohibited, except for ashtrays  
26 displayed for sale and not for use on the premises.

27 ~~5.4.~~ By December 6, 2012, communicate to all existing employees and to all prospective  
28 employees upon their application for employment that smoking is prohibited in that  
29 place.

30 ~~6.5.~~ For places under his or her control, direct a person who is smoking in violation of this  
31 Act to extinguish the product being smoked. If the person does not stop smoking, the

1 owner, operator, manager, or employee shall refuse service and shall immediately ask  
2 the person to leave the premises. If the person in violation refuses to leave the  
3 premises, the owner, operator, manager, or employee shall immediately report the  
4 violation to an enforcement agency identified in this Act. The refusal of the person to  
5 stop smoking or leave the premises in response to requests made under this section  
6 by an owner, operator, manager, or employee shall not constitute a violation of the Act  
7 by the owner, operator, manager, or employee.