

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1198

Introduced by

Representatives Sandvig, Rose, Gorder

Senators Andrist, Mutzenberger, Thane

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, and 23-12-11 of the North Dakota Century Code,
4 regarding restrictions on smoking in places of public access and nonpublic workplaces; and to
5 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 and nonpublic**
10 **workplaces - Definitions.** In sections 23-12-09 through 23-12-11, unless the context or
11 subject matter otherwise requires:

12 1. "Place of public ~~assembly~~ access" means any enclosed indoor place of business,
13 commerce, banking, financial service, or other service-related activity, whether
14 publicly or privately owned and whether operated for profit or not, to which persons
15 not employed at the place of public access have general and regular access or
16 which the public uses, including:
17 a. ~~Enclosed theaters; auditoriums; gymnasiums; elevators; libraries; vehicles~~
18 ~~used in public transportation; rooms in which persons are confined as a~~
19 ~~matter of health care, including the waiting room, restroom, lobby, or hallway~~
20 ~~of a hospital, nursing home, rest home, or other health care institution or~~
21 ~~facility, and waiting areas in all public transportation terminals.~~ Buildings,
22 offices, shops, elevators, restrooms, means of transportation or common
23 carrier waiting rooms, restaurants, cafes, cafeterias, taverns or cabarets,
24 shopping malls, retail stores, grocery stores, arcades, libraries, theaters,

concert halls, museums, art galleries, planetariums, historical sites,
auditoriums, arenas, barbershops, hair salons, laundromats, and sports or
fitness facilities;

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

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

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

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

- d. Common areas of multiunit residential buildings, including apartments,
duplexes, and condominiums;

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

- f. Any area where the proprietor or manager of the area has posted a
conspicuous sign stating "no smoking", "thank you for not smoking", or similar
statement.

2. ~~"Smoke drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or~~
~~other smoking equipment in a place of public assembly outside a designated~~
~~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 smoking equipment.

6 **SECTION 2. AMENDMENT.** Section 23-12-10 of the 1995 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **23-12-10. ~~Designation of~~ Restrictions on smoking areas in public places and in**
9 **specified places - 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 enclosed indoor place of~~
17 ~~public access and publicly owned building or office, except under subsection 2.~~

- 18 2. Subsection 1 does not apply to:

- 19 a. (1) Any building owned, rented, leased, or otherwise operated by a social,
20 fraternal, or religious organization when used solely by the organization
21 members or their guests or families; or
22 (2) Any facility rented or leased for private functions from which the general
23 public is excluded and arrangements for the function are under the
24 control of the function sponsor;
25 b. Any workplace smoking area as provided in section 3 of this Act;
26 c. Any area, not commonly open to the public, of an owner-operated business
27 having no employee other than the owner-operator;
28 d. Any guest rooms in a hotel, motel, bed and breakfast facility, and other similar
29 lodging facility, but smoking is prohibited under subsection 1 in the common
30 areas of these facilities, including dining areas and lobby areas;

- e. Any establishment licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises;
- f. Any private club;
- g. Any separate enclosed smoking area:
 - (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
- h. Adults smoking in designated smoking areas in private schools or educational facilities or on the grounds of private schools or facilities during nonschool hours.

3. Except as otherwise provided, designated smoking areas in a place of public assembly access 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. a. An employer who operates a workplace that is not a place of public access or a publicly owned building or office shall establish or negotiate through the collective bargaining process a written smoking policy before September 1, 1997, or within thirty days after becoming an employer subject to this section.
- b. If the employer employs fewer than ten full-time employees on a regular basis, the policy need not be in writing.
2. The policy shall:
 - a. Prohibit smoking in the workplace;
 - b. Restrict smoking to designated enclosed smoking areas; or

c. Permit smoking in designated unenclosed smoking areas if the layout of the workplace prevents smoke in the work areas of all nonsmoking employees in the workplace, and three-quarters of the employees in the workplace agree.

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

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

23-12-10.1. Responsibility of proprietors.

1. The proprietor or other person with general supervisory responsibility over a place of public assembly shall post an appropriate sign in any designated smoking area where smoking is prohibited under sections 23-12-09 through 23-12-11 who observes a person smoking in apparent violation of this chapter shall request the person to extinguish the tobacco product or smoking equipment.

2. If the person fails to comply, the proprietor or other person with general supervisory responsibility shall ask the person to leave the premises.

SECTION 5. AMENDMENT. Section 23-12-11 of the North Dakota Century Code is amended and reenacted as follows:

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