

Fifty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1408

Introduced by

Representatives Kingsbury, Herbel

Senator Nichols

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

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

- 10 1. "Place of public ~~assembly access~~" means any enclosed indoor place of business  
11 or service-related activity, whether publicly or privately owned and whether or not  
12 operated for profit, which the public uses or to which individuals not employed at  
13 the place have general and regular access, including:
- 14 a. ~~Enclosed theaters; auditoriums; gymnasiums; elevators; libraries; vehicles~~  
15 ~~used in public transportation; rooms in which persons are confined as a~~  
16 ~~matter of health care, including the waiting room, restroom, lobby, or hallway~~  
17 ~~of a hospital, nursing home, rest home, or other health care institution or~~  
18 ~~facility, and waiting areas in all public transportation terminals. Elevators,~~  
19 ~~restrooms, means of public transportation or common carrier waiting rooms,~~  
20 ~~restaurants, cafes, cafeterias, shopping malls, retail stores, grocery stores,~~  
21 ~~arcades, libraries, theaters, concert halls, museums, art galleries,~~  
22 ~~planetariums, historical sites, auditoriums, arenas, laundromats, and sports or~~  
23 ~~fitness facilities;~~

- 1           b. ~~Any building or other enclosed structure owned or leased by the state, its~~  
2           ~~agencies, or political subdivisions, and all public education buildings.~~  
3           Common areas of nursing homes, hospitals, resorts, hotels, motels, bed and  
4           breakfast facilities, and other similar lodging facilities, including the lobbies,  
5           hallways, elevators, cafeterias, other designated dining areas, and restrooms  
6           of any of these;
- 7           c. ~~Each portion of a building or enclosed structure that is not included in this~~  
8           ~~subsection if it has the seating capacity for fifty or more persons and is~~  
9           ~~available to the public, including restaurants, food service establishments,~~  
10           ~~dining rooms, cafes, cafeterias, or other rooms used primarily for the service~~  
11           ~~of food, regardless of whether the establishments serve alcoholic beverages.~~
- 12           ~~The term does not include private, enclosed rooms of residence, establishments~~  
13           ~~licensed primarily or exclusively to sell alcoholic beverages for consumption on the~~  
14           ~~premises, including private and fraternal organizations, or areas used for the~~  
15           ~~service of alcoholic beverages and which are physically separate rooms within~~  
16           ~~food service establishments. Child care facilities subject to licensure by the~~  
17           ~~department of human services, including those operated in private homes when~~  
18           ~~any child cared for under that license is present;~~
- 19           d. Common areas of multiunit residential buildings, including apartments,  
20           duplexes, and condominiums, regardless of whether they are security  
21           buildings;
- 22           e. Public and private elementary or secondary school buildings and educational  
23           facilities or the property on which those facilities are located; and
- 24           f. Any area at which the owner or manager of the area has posted a  
25           conspicuous sign stating "no smoking", "thank you for not smoking", or similar  
26           statement.
- 27           2. ~~"Smoke drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or~~  
28           ~~other smoking equipment in a place of public assembly outside a designated~~  
29           ~~smoking area. "Publicly owned building or office" means any enclosed indoor~~  
30           ~~place or portion of a place owned, leased, or rented by any state or political~~

1            subdivision, or by any agency supported by appropriation of, or by contracts or  
2            grants from, funds derived from the collection of taxes.

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

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

7            **23-12-10. ~~Designation of smoking areas~~ Places of public access and publicly**  
8 **owned buildings or offices - Smoking restrictions - Exceptions.**

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

17            2. Subsection 1 does not apply to:

18            a. Any place of public access owned, rented, leased, or otherwise operated by a  
19 social, fraternal, or religious organization when that place is being used solely  
20 by the organization members or their guests or families;

21            b. Any place of public access rented or leased for private functions from which  
22 the general public is excluded and arrangements for the function are under  
23 the control of the function sponsor;

24            c. Any area within a place of public access which is not commonly open to the  
25 public and which is part of an owner-operated business having no employee  
26 other than the owner-operator;

27            d. Any guest room in a hotel, motel, bed and breakfast facility, and other similar  
28 lodging facility;

29            e. Any establishment in a place of public access which is licensed primarily or  
30 exclusively to sell alcoholic beverages for consumption on the premises; and

31            f. Any private club in a place of public access.

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

8           **SECTION 3. AMENDMENT.** Section 23-12-10.1 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10           **23-12-10.1. Smoking violations - Responsibility of proprietors owners.** The  
11 ~~proprietor owner~~ or other person with general supervisory responsibility over a place ~~of public~~  
12 ~~assembly shall post an appropriate sign in any designated smoking area where smoking is~~  
13 ~~prohibited under sections 23-12-09 through 23-12-11 who observes an individual smoking in~~  
14 ~~apparent violation of these sections shall request the individual to extinguish the tobacco~~  
15 ~~product or smoking equipment. If the individual fails to comply, the owner or other person with~~  
16 ~~general supervisory responsibility shall ask the individual to leave the premises.~~

17           **SECTION 4. AMENDMENT.** Section 23-12-10.2 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **23-12-10.2. Complaints and enforcement - City and county ordinances and home**  
20 **rule charters.**

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

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

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

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