

**FIRST ENGROSSMENT
with Conference Committee Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2300

Introduced by

Senators Kilzer, G. Lee

Representatives Kaldor, Kingsbury

1 A BILL for an Act to create and enact a new section to chapter 23-12 and a new section to
2 chapter 34-06 of the North Dakota Century Code, relating to smoke-free exceptions and the
3 authority of the labor commissioner; to amend and reenact sections 23-12-09, 23-12-10,
4 23-12-10.2, and 23-12-11 of the North Dakota Century Code, relating to smoke-free
5 environments; to repeal section 23-12-10.1 of the North Dakota Century Code, relating to
6 smoking area signage; and to provide a penalty.

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

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

10 **23-12-09. Smoking in public places of public assembly and places of**
11 **employment - Definitions.** In sections 23-12-09 through 23-12-11, unless the context or
12 subject matter otherwise requires:

- 13 1. "Place of public assembly" means:
- 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.~~
- 19 b. ~~Any building or other enclosed structure owned or leased by the state, its~~
20 ~~agencies, or political subdivisions, and all public education buildings.~~
- 21 e. ~~Each portion of a building or enclosed structure that is not included in this~~
22 ~~subsection if it has the seating capacity for fifty or more persons and is~~
23 ~~available to the public, including restaurants, food service establishments,~~

- 1 ~~dining rooms, cafes, cafeterias, or other rooms used primarily for the service~~
2 ~~of food, regardless of whether the establishments serve alcoholic beverages.~~
3 ~~The term does not include private, enclosed rooms of residence, establishments~~
4 ~~licensed primarily or exclusively to sell alcoholic beverages for consumption on the~~
5 ~~premises, including private and fraternal organizations, or areas used for the~~
6 ~~service of alcoholic beverages and which are physically separate rooms within~~
7 ~~food service establishments.~~
- 8 2. ~~"Smoke drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or~~
9 ~~other smoking equipment in a place of public assembly outside a designated~~
10 ~~smoking area. "Bar" means a retail alcoholic beverage establishment licensed~~
11 ~~under chapter 5-02 that is devoted to the serving of alcoholic beverages for~~
12 ~~consumption by guests on the premises and in which the serving of food is only~~
13 ~~incidental to the consumption of those beverages. The term includes a bar located~~
14 ~~within a hotel, bowling center, or restaurant that is not licensed primarily or~~
15 ~~exclusively to sell alcoholic beverages 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.
- 25 5. "Enclosed area" means all space between a floor and ceiling that is enclosed on all
26 sides by solid walls or windows, exclusive of doorways, which extend from the floor
27 to the ceiling.
- 28 6. "Health care facility" means any office or institution providing health care services,
29 including a hospital; clinic; ambulatory surgery center; outpatient care facility;
30 nursing, basic, or assisted living facility; and laboratory.

- 1 7. "Health care services" include medical, surgical, dental, vision, chiropractic, and
2 pharmaceutical services.
- 3 8. "Place of employment" means an area under the control of a public or private
4 employer that employees normally frequent during the course of employment,
5 including work areas, auditoriums, classrooms, conference rooms, elevators,
6 employee cafeterias, employee lounges, hallways, meeting rooms, private offices,
7 restrooms, and stairs.
- 8 9. "Public place" means an enclosed area to which the public has access or in which
9 the public is permitted, including a publicly owned building or office, and enclosed
10 areas available to and customarily used by the general public in businesses and
11 nonprofit entities patronized by the public, including bars; bingo facilities; child care
12 facilities subject to licensure by the department of human services, including those
13 operated in private homes when any child cared for under that license is present;
14 convention facilities; educational facilities, both public and private; facilities
15 primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital,
16 or other similar performance; financial institutions; health care facilities; hotels and
17 motels; laundromats; any common areas in apartment buildings, condominiums,
18 mobile home parks, retirement facilities, nursing homes, and other multiple-unit
19 residential facilities; museums, libraries, galleries, and aquariums; polling places;
20 professional offices; public transportation facilities, including buses and taxicabs,
21 and ticket, boarding, and waiting areas of public transit depots; reception areas;
22 restaurants; retail food production and marketing establishments; retail service
23 establishments; retail stores; rooms, chambers, places of meeting or public
24 assembly, including school buildings; service lines; shopping malls; sports arenas,
25 including enclosed places in outdoor arenas; theaters; and waiting rooms.
- 26 10. "Publicly owned building or office" means a place owned, leased, or rented by any
27 state or political subdivision, or by any agency supported by appropriation of, or by
28 contracts or grants from, funds derived from the collection of taxes.
- 29 11. "Restaurant" includes every building or other structure, or any part thereof, and all
30 buildings in connection therewith that are kept, used, maintained, advertised, or
31 held out to the public as a place where food is served, including coffee shops,

1 cafeterias, private and public school cafeterias, kitchens, and catering facilities in
2 which food is prepared on the premises for serving elsewhere, and a bar area
3 within a restaurant.

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

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

9 3. 14. "Smoking" means ~~carrying~~ possessing a lighted cigar, cigarette, pipe, ~~weed, plant,~~
10 or any other lighted ~~smoking equipment~~ tobacco product in any manner or in any
11 form.

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

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

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

21 **23-12-10. ~~Designation of smoking areas~~ Smoking restrictions - Exceptions -**

22 **Retaliation - Application.** ~~Smoking is not permitted outside of designated smoking areas in~~
23 ~~places of public assembly as provided in this section. Smoking areas may be designated only~~
24 ~~by proprietors of privately owned buildings or by public officials having general supervisory~~
25 ~~responsibility for government buildings. No smoking area may be designated in a place in~~
26 ~~which smoking is prohibited by the state fire marshal. A sign must be posted in any designated~~
27 ~~smoking area which states "Designated Smoking Area" or words to that effect.~~

28 ~~Except as otherwise provided, designated smoking areas in a place of public assembly~~
29 ~~may not occupy more than fifty percent of the total area available to the public and must be~~
30 ~~situated to minimize smoke drift. The proprietor of a food establishment with the seating~~
31 ~~capacity for fifty or more persons may temporarily, during the course of daily business, expand~~

1 ~~the designated smoking area beyond fifty percent of the total available area if the smoking area~~
2 ~~becomes fully occupied and the additional space needed for the expansion is vacant or~~
3 ~~available.~~

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

7 a. Public places; and

8 b. Places of employment.

9 2. The following areas are exempt from subsection 1:

10 a. Private residences, except when operating as a child care facility subject to
11 licensure by the department of human services and when any child cared for
12 under that license is present in that facility.

13 b. Hotel and motel rooms, and other places of lodging, that are rented to guests
14 and are designated as smoking rooms.

15 c. Retail tobacco stores, provided that smoke from these places does not
16 infiltrate into areas where smoking is prohibited under this section.

17 d. Outdoor areas of places of employment, except a sports arena.

18 e. Any area that is not commonly accessible to the public and which is part of an
19 owner-operated business having no employee other than the owner-operator.

20 f. Bars.

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

24 h. Separately enclosed areas in truckstops which are accessible only to adults.

25 3. Smoking as part of a traditional American Indian spiritual or cultural ceremony is
26 not prohibited.

27 4. No person or employer shall discharge, refuse to hire, or in any manner retaliate
28 against an employee, applicant for employment, or other person because that
29 person asserts or exercises any rights afforded by this section or reports or
30 attempts to prosecute a violation of this section.

1 5. This section may not be interpreted or construed to permit smoking where it is
2 otherwise restricted by other applicable laws.

3 **SECTION 3. AMENDMENT.** Section 23-12-10.2 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23-12-10.2. Complaints and enforcement - City and county ordinances and home**
6 **rule charters.** ~~The state department of health is designated to receive reports or complaints~~
7 ~~from any person regarding violations of sections 23-12-09 through 23-12-11.~~

8 1. State agencies with statutory jurisdiction over ~~places of public assembly~~ may a
9 state-owned building or office shall enforce sections 23-12-09 through 23-12-11
10 section 23-12-10. These agencies include the fire marshal department, state
11 department of health, department of human services, legislative council, and office
12 of management and budget. The agencies may mutually agree as to the manner
13 in which enforcement is to be accomplished and may ~~amend their~~ adopt
14 administrative rules to ensure compliance with sections 23-12-09 through 23-12-11
15 section 23-12-10, including referral of violations to an appropriate law enforcement
16 agency for enforcement pursuant to section 23-12-11.

17 ~~Authorities other than state agencies may conduct inspections and report violations to~~
18 ~~state agencies, or enforce smoking policies, rules, or ordinances more stringent than those~~
19 ~~contained in sections 23-12-09 through 23-12-11.~~

20 2. A city or county ordinance, a city or county home rule charter, or an ordinance
21 adopted under a home rule charter may not provide for less stringent provisions
22 than those provided under sections 23-12-09 through 23-12-11. Nothing in this Act
23 shall preempt or otherwise affect any other state or local tobacco control law that
24 provides more stringent protection from the hazards of environmental tobacco
25 smoke. This subsection does not preclude any city or county from enacting any
26 ordinance containing penal language when otherwise authorized to do so by law.

27 **SECTION 4.** A new section to chapter 23-12 of the North Dakota Century Code is
28 created and enacted as follows:

29 **Exceptions - Medical necessity.**

30 1. Notwithstanding the provisions of any other state or local law, a patient may smoke
31 in a hospital licensed by the state or on the grounds of a hospital licensed by the

1 state if the patient's attending physician authorizes the activity based on medical
2 policies adopted by the hospital organized medical staff.

3 2. Notwithstanding the provisions of any other state or local law, a resident of a
4 licensed basic care facility or a licensed nursing facility may smoke in the facility or
5 on the grounds of the facility if approved by the board of the facility.

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

8 **23-12-11. Penalty.** ~~Any proprietor~~

9 1. An individual who smokes in an area in which smoking is prohibited under section
10 23-12-10 is guilty of an infraction.

11 2. An owner or other person with general supervisory responsibility over a place of
12 ~~public assembly who willfully fails to comply with sections 23-12-09 through~~
13 ~~23-12-11 is subject to a fine not to exceed one hundred dollars per violation a~~
14 public place or place of employment who willfully fails to comply with section
15 23-12-10 is guilty of an infraction, subject to a fine not to exceed one hundred
16 dollars for the first violation, to a fine not to exceed two hundred dollars for a
17 second violation within one year, and a fine not to exceed five hundred dollars for
18 each additional violation within one year of the preceding violation.

19 **SECTION 6.** A new section to chapter 34-06 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Authority of labor commissioner - Exception.** Notwithstanding section 34-06-03, the
22 labor commissioner may not adopt rules relating to sections 23-12-09 through 23-12-11. If the
23 labor commissioner is made aware of a possible violation of chapter 23-12, the commissioner
24 may refer the violation to an appropriate law enforcement agency for enforcement pursuant to
25 section 23-12-11.

26 **SECTION 7. REPEAL.** Section 23-12-10.1 of the North Dakota Century Code is
27 repealed.