

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED 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, vehicles used in public transportation,
23 means of transportation or common carrier waiting rooms, restaurants, cafes,
24 cafeterias, taverns or cabarets, shopping malls, retail stores, grocery stores,

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

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

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

10 **23-12-10. ~~Designation of~~ Restrictions on smoking areas in public places and in**
11 **specified places - Exceptions.**

12 1. ~~Smoking is not permitted outside of designated smoking areas in places of public~~
13 ~~assembly as provided in this section. Smoking areas may be designated only by~~
14 ~~proprietors of privately owned buildings or by public officials having general~~
15 ~~supervisory responsibility for government buildings. No smoking area may be~~
16 ~~designated in a place in which smoking is prohibited by the state fire marshal. A~~
17 ~~sign must be posted in any designated smoking area which states "Designated~~
18 ~~Smoking Area" or words to that effect prohibited in every enclosed indoor place of~~
19 ~~public access and publicly owned building or office, except under subsection 2.~~

20 2. Subsection 1 does not apply to:

21 a. (1) A building owned, rented, leased, or otherwise operated by a social,
22 fraternal, or religious organization when used solely by the organization
23 members or their guests or families; or

24 (2) A facility rented or leased for private functions from which the general
25 public is excluded and arrangements for the function are under the
26 control of the function sponsor;

27 b. A workplace smoking area as provided in section 3 of this Act;

28 c. An area, not commonly open to the public, of an owner-operated business
29 having no employee other than the owner-operator;

- 1 d. A guest room in a hotel, motel, bed and breakfast facility, or other similar
2 lodging facility, but smoking is prohibited under subsection 1 in the common
3 areas of these facilities;
4 e. A establishment licensed primarily or exclusively to sell alcoholic beverages
5 for consumption on the premises;
6 f. A private club;
7 g. A separate enclosed smoking area located in the passenger terminal of an
8 international airport or a food establishment;
9 h. An adult smoking in a designated smoking area in a private school or
10 educational facility or on the grounds of a private school or facility during
11 nonschool hours;
12 i. A tobacco retailer that primarily or exclusively sells tobacco products; and
13 j. A restaurant, food service establishment, dining room, cafe, cafeteria, or other
14 room used primarily for the service of food, regardless of whether the
15 establishment serves alcoholic beverages, if smoking is limited by the
16 proprietor to an area clearly designated as a smoking area.
17 3. Except as otherwise provided, designated smoking areas in a place of public
18 ~~assembly access~~ may not occupy more than fifty percent of the total area available
19 to the public and must be situated to minimize smoke drift. ~~The proprietor of a~~
20 ~~food establishment with the seating capacity for fifty or more persons may~~
21 ~~temporarily, during the course of daily business, expand the designated smoking~~
22 ~~area beyond fifty percent of the total available area if the smoking area becomes~~
23 ~~fully occupied and the additional space needed for the expansion is vacant or~~
24 ~~available.~~

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

27 **Nonpublic workplaces - Smoking restrictions.**

- 28 1. a. An employer who operates a workplace that is not a place of public access or
29 a publicly owned building or office shall establish a written smoking policy
30 before September 1, 1997, or within thirty days after becoming an employer
31 subject to this section.

- 1 b. If the employer employs fewer than ten full-time employees on a regular
2 basis, the policy need not be in writing.
- 3 2. The policy must:
- 4 a. Prohibit smoking in the workplace;
5 b. Restrict smoking to designated enclosed smoking areas; or
6 c. Permit smoking in designated unenclosed smoking areas if the layout of the
7 workplace prevents smoke in the work areas of all nonsmoking employees in
8 the workplace and two-thirds of the employees in the workplace agree.

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

11 **23-12-10.1. Responsibility of proprietors.**

- 12 1. The proprietor or other person with general supervisory responsibility over a place
13 of public assembly shall post an appropriate sign in any designated smoking area
14 where smoking is prohibited under sections 23-12-09 through 23-12-11 who
15 observes a person smoking in apparent violation of this chapter shall request the
16 person to extinguish the tobacco product or smoking equipment.
- 17 2. If the person fails to comply, the proprietor or other person with general
18 supervisory responsibility shall ask the person to leave the premises.

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

21 **23-12-11. Penalty.** ~~Any proprietor or other person with general supervisory~~
22 ~~responsibility over a place of public assembly who willfully fails to comply with sections~~
23 ~~23-12-09 through 23-12-11~~ A person who violates section 23-12-10 or section 3 of this Act is
24 subject to a fine not to exceed one hundred dollars per violation.