

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1256

Introduced by

Representatives Kingsbury, Clark, Herbel, Koppang, Meier

Senator Andrist

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
15 individuals not employed at the place of public access have general and regular
16 access or 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. Elevators,~~
22 restrooms, means of transportation or common carrier waiting rooms,
23 restaurants, cafes, cafeterias, shopping malls, retail stores, grocery stores,
24 arcades, libraries, theaters, concert halls, museums, art galleries,

1 planetariums, historical sites, auditoriums, arenas, laundromats, and sports or
2 fitness facilities;

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

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

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

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

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

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

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

28 2. ~~"Smoke drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or~~
29 ~~other smoking equipment in a place of public assembly outside a designated~~
30 ~~smoking area. "Publicly owned building or office" means any enclosed indoor~~
31 ~~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 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **23-12-10. ~~Designation of~~ Restrictions on smoking areas in public places and in**
8 **specified places - 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 and is prohibited within one hundred feet
17 [30.48 meters] of any primary doorway to a place of public access or to a publicly
18 owned building or office, except as provided under subsection 2.

19 2. Subsection 1 does not apply to:

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

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

26 b. Any workplace smoking area as provided in section 3 of this Act;

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

29 d. Any guest room in a hotel, motel, bed and breakfast facility, and other similar
30 lodging facility, but smoking is prohibited under subsection 1 in the common
31 areas of these facilities, including dining areas and lobby areas;

- 1 e. Any establishment licensed primarily or exclusively to sell alcoholic beverages
2 for consumption on the premises;
- 3 f. Any private club;
- 4 g. Any separate enclosed smoking area:
- 5 (1) Located in the passenger terminal of an international airport or a food
6 establishment;
- 7 (2) Vented directly to the outdoors; and
- 8 (3) Certified, by a mechanical engineer licensed by the state, to prevent
9 the drift of any smoke to any nonsmoking area; and
- 10 h. Adults smoking in designated smoking areas in private schools or educational
11 facilities or on the grounds of private schools or facilities during nonschool
12 hours.
- 13 3. Except as otherwise provided, designated smoking areas in a place of public
14 ~~assembly access~~ may not occupy more than fifty percent of the total area available
15 to the public and ~~must be situated to minimize smoke drift. The proprietor of a~~
16 ~~food establishment with the seating capacity for fifty or more persons may~~
17 ~~temporarily, during the course of daily business, expand the designated smoking~~
18 ~~area beyond fifty percent of the total available area if the smoking area becomes~~
19 ~~fully occupied and the additional space needed for the expansion is vacant or~~
20 ~~available.~~

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

23 **Nonpublic workplaces - Smoking restrictions.**

- 24 1. a. An employer who operates a workplace that is not a place of public access or
25 a publicly owned building or office shall establish or negotiate through the
26 collective bargaining process a written smoking policy before September 1,
27 2001, or within thirty days after becoming an employer subject to this section.
- 28 b. If the employer employs fewer than ten full-time employees on a regular
29 basis, the policy need not be in writing.
- 30 2. The policy shall:
- 31 a. Prohibit smoking in the workplace;

- 1 b. Restrict smoking to designated enclosed smoking areas; or
2 c. Permit smoking in designated unenclosed smoking areas if the layout of the
3 workplace prevents smoke in the work areas of all nonsmoking employees in
4 the workplace, and three-quarters of the employees in the workplace agree.
5 3. If the state department of health determines the smoking areas designated under
6 subdivision b or c of subsection 2 do not effectively prevent smoke in the work
7 areas of nonsmoking employees, the department shall require that the employer
8 prohibit smoking in the workplace through a hearing procedure under section
9 23-12-10.2.

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

12 **23-12-10.1. Responsibility of proprietors.** The proprietor or other person with
13 general supervisory responsibility over a place ~~of public assembly shall post an appropriate~~
14 ~~sign in any designated smoking area~~ where smoking is prohibited under sections 23-12-09
15 through 23-12-11 who observes an individual smoking in apparent violation of these sections
16 shall request the individual to extinguish the tobacco product or smoking equipment. If the
17 individual fails to comply, the proprietor or other person with general supervisory responsibility
18 shall ask the individual 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 for the first violation. A person who
25 violates section 23-12-10 or section 3 of this Act is subject to a fine of not less than one
26 hundred dollars and not more than five hundred dollars for the second and each subsequent
27 violation.