

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

H

1

HOUSE BILL 2

Short Title: Prohibit Smoking in Public & Work Places.

(Public)

Sponsors: Representatives Holliman, Weiss, Glazier, Barnhart (Primary Sponsors); Adams, M. Alexander, Bordsen, Burris-Floyd, Carney, Cotham, Dickson, England, Fisher, Goforth, Goodwin, Hall, Harrell, Harrison, Insko, Luebke, Mackey, Martin, Neumann, Pierce, Ross, Tarleton, Underhill, Wray, and Yongue.

Referred to: Rules, Calendar, and Operations of the House.

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 2, 2010, Article 23 of Chapter 130A of the General Statutes reads as rewritten:

"Article 23.

"Smoking Prohibited in Public ~~Plaees~~Places and Places of Employment.

~~Part 1. Smoking in State Government Buildings.~~"Part 1A. Findings and Intent.

"§ 130A-491. Legislative findings and intent.

(a) Findings. – The General Assembly finds that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers. In 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.

(b) Intent. – It is the intent of the General Assembly to protect the health of individuals in public places and places of employment and riding in State government vehicles ~~working in or visiting State government buildings~~ from the risks related to secondhand smoke. It is further the intent of the General Assembly to ~~protect the health of individuals driving or riding in State-controlled passenger-carrying vehicles assigned permanently or temporarily to State employees or State agencies or institutions for official State business~~ allow local governments to adopt local laws governing smoking within their jurisdictions that are more restrictive than the State law.

"§ 130A-492. Definitions.

The following definitions apply in this Article:

(1) "Employee". – A person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer with or without compensation.



- 1 (2) "Employer". – An individual person, business, association, political
2 subdivision, or other public or private entity, including a nonprofit entity,
3 that employs or contracts for or accepts the provision of services from one or
4 more employees.
- 5 (3) "Enclosed area". – An area with a roof or other overhead covering of any
6 kind and walls or side coverings of any kind, regardless of the presence of
7 openings for ingress and egress, on all sides or on all sides but one.
- 8 (4) "Grounds". – An unenclosed area owned, leased, or occupied by State or
9 local government.
- 10 (5) "Local government". – A local political subdivision of this State, an airport
11 authority, or an authority or body created by an ordinance, joint resolution,
12 or rules of any such entity.
- 13 (6) "Local government building". – A building owned, leased as lessor, or the
14 area leased as lessee and occupied by a local government.
- 15 (7) "Lodging establishment". – An establishment that provides lodging for pay
16 to the public.
- 17 (8) "Local vehicle". – A passenger-carrying vehicle owned, leased, or otherwise
18 controlled by local government and assigned permanently or temporarily by
19 local government to local government employees, agencies, institutions, or
20 facilities for official local government business.
- 21 (8a) "Public place". – An enclosed area to which the public is invited or in which
22 the public is permitted.
- 23 (8b) "Place of employment". – An enclosed area under the control of a public or
24 private employer that employees use during the course of employment or for
25 any other purpose.
- 26 (8c) "Tobacco shop". – A business establishment the main purpose of which is
27 the sale of tobacco, tobacco products, and accessories for such products that
28 receives no less than seventy-five percent (75%) of its total annual revenues
29 from the sale of tobacco, tobacco products, and accessories for such
30 products, and does not serve food or alcohol on its premises.
- 31 (9) "Smoking". – The use or possession of a lighted cigarette, lighted cigar,
32 lighted pipe, or any other lighted tobacco product.
- 33 (10) "State government". – The political unit for the State of North Carolina,
34 including all agencies of the executive, judicial, and legislative branches of
35 government.
- 36 (11) "State government building". – A building owned, leased as lessor, or the
37 area leased as lessee and occupied by State government.
- 38 (12) "State vehicle". – A passenger-carrying vehicle owned, leased, or otherwise
39 controlled by the State and assigned permanently or temporarily to a State
40 employee or State agency or institution for official State business.

41 "Part 1B. Smoking Prohibited in State Government Buildings and Vehicles.

42 **"§ 130A-493. Smoking prohibited in State government buildings and State ~~vehicles~~**
43 **prohibited vehicles.**

44 (a) Notwithstanding Article 64 of Chapter 143 of the General Statutes pertaining to
45 State-controlled buildings, smoking is prohibited inside State government buildings except as
46 provided in subsection (b) of this section. ~~As to smoking rooms in residence halls that were~~
47 ~~permitted by G.S. 143-597(a)(6), this Article becomes effective beginning with the 2008-2009~~
48 ~~academic year.~~

49 (b) Smoking is permitted inside State government buildings that are used for medical or
50 scientific research to the extent that smoking is an integral part of the research. Smoking

1 permitted under this subsection shall be confined to the area where the research is being
2 conducted.

3 (c) The individual in charge of the State government building or the individual's
4 designee shall post signs in conspicuous areas of the building. The signs shall state that
5 "smoking is prohibited" and may include the international "No Smoking" symbol, which
6 consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red
7 bar across it. In addition, ~~in any State psychiatric hospital, the person who owns, manages,
8 operates, or otherwise controls the hospital shall:~~ the individual in charge of the building or the
9 individual's designee shall:

10 (1) ~~Direct any a~~ person who is smoking inside the facility to extinguish the
11 lighted smoking product.

12 (2) ~~Provide~~ In a State psychiatric hospital, provide written notice to individuals
13 upon admittance that smoking is prohibited inside the facility and obtain the
14 signature of the individual or the individual's representative acknowledging
15 receipt of the notice.

16 (c1) Smoking is prohibited inside State vehicles. The individual or the individual's
17 designee in charge of assigning the vehicle shall place one or more signs in conspicuous areas
18 of the vehicle. The signs shall state that "smoking is prohibited" and may include the
19 international "No Smoking" symbol, which consists of a pictorial representation of a burning
20 cigarette enclosed in a red circle with a red bar across it. If the vehicle is used for undercover
21 law enforcement operations, a sign is not required to be placed in the vehicle as provided in this
22 subsection.

23 (d) Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be
24 punishable as a misdemeanor.

25 **"§ 130A-494. Other prohibitions.**

26 Nothing in this Article repeals any other law prohibiting smoking, nor does it limit any law
27 allowing regulation or prohibition of smoking on walkways or on the grounds of buildings.

28 **"§ 130A-495. Rules.**

29 The Commission shall adopt rules to implement this Part.

30 "Part 1C. Smoking Prohibited in Public Places and Places of Employment.

31 **"§ 130A-496. Smoking prohibited in public places and places of employment.**

32 (a) Notwithstanding Article 64 of Chapter 143 of the General Statutes, smoking is
33 prohibited in public places and places of employment, except as provided in subsection (b) of
34 this section.

35 (b) Smoking may be permitted in the following places:

36 (1) A private residence, except when being used commercially to provide child
37 care or adult care services.

38 (2) A tobacco shop if smoke from the business does not migrate into an
39 enclosed area where smoking is prohibited pursuant to this Article. A
40 tobacco shop that begins operation after July 1, 2009, may only allow
41 smoking if it is located in a freestanding structure occupied solely by the
42 tobacco shop and smoke from the shop does not migrate into an enclosed
43 area where smoking is prohibited pursuant to this Article.

44 (3) A tobacco manufacturing or processing facility.

45 (4) A designated smoking guest room in a lodging establishment. No greater
46 than twenty percent (20%) of a lodging establishment's guest rooms may be
47 designated smoking guest rooms.

48 **"§ 130A-497. Implementation and enforcement.**

49 (a) A person who owns, manages, operates, or otherwise controls a public place or
50 place of employment in which smoking is prohibited shall:

1 controls a public place or place of employment and fails to comply with the provisions of
2 Article 23 of this Chapter or with rules adopted thereunder:

3 (1) First violation. – Provide the person in violation with written notice of the
4 person's first violation and notification of action to be taken in the event of
5 subsequent violations.

6 (2) Second violation. – Provide the person in violation with written notice of the
7 person's second violation and notification of administrative penalties to be
8 imposed for subsequent violations.

9 (3) Subsequent violations. – Impose on the person in violation an administrative
10 penalty of not more than two hundred dollars (\$200.00) for the third and
11 subsequent violations.

12 Each day on which a violation of this Article or rules adopted pursuant to this Article
13 occurs shall be considered a separate and distinct violation. Notwithstanding G.S. 130A-25, a
14 violation of Article 23 of this Chapter shall not be punishable as a criminal violation."

15 **SECTION 3.** This act is effective when it becomes law.