

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 2
Committee Substitute Favorable 3/3/09

Short Title: Prohibit Smoking in Public & Workplaces. (Public)

Sponsors:

Referred to:

January 29, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT SMOKING IN PUBLIC PLACES AND PLACES OF
3 EMPLOYMENT.

4 The General Assembly of North Carolina enacts:

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

7 "Article 23.

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

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

10 "**§ 130A-491. Legislative findings and intent.**

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

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

23 "**§ 130A-492. Definitions.**

24 The following definitions apply in this Article:

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

29 (2) "Employer". – An individual person, business, association, political
30 subdivision, or other public or private entity, including a nonprofit entity,
31 that employs or contracts for or accepts the provision of services from one or
32 more employees.

33 (3) "Enclosed area". – An area with a roof or other overhead covering of any
34 kind and walls or side coverings of any kind, regardless of the presence of
35 openings for ingress and egress, on all sides or on all sides but one.

36 (4) "Grounds". – An unenclosed area owned, leased, or occupied by State or
37 local government.



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

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

33 **"§ 130A-493. Smoking prohibited in State government buildings and State ~~vehicles~~**
 34 **prohibited vehicles.**

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

40 (b) Smoking is permitted inside State government buildings that are used for medical or
 41 scientific research to the extent that smoking is an integral part of the research. Smoking
 42 permitted under this subsection shall be confined to the area where the research is being
 43 conducted.

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

- 1 (1) Direct ~~any a~~ person who is smoking inside the facility to extinguish the
2 lighted smoking product.
- 3 (2) ~~Provide~~ In a State psychiatric hospital, provide written notice to individuals
4 upon admittance that smoking is prohibited inside the facility and obtain the
5 signature of the individual or the individual's representative acknowledging
6 receipt of the notice.

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

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

16 **"§ 130A-494. Other prohibitions.**

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

19 **"§ 130A-495. Rules.**

20 The Commission shall adopt rules to implement this Part.

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

22 **"§ 130A-496. Smoking prohibited in public places and places of employment.**

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

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

- 27 (1) A private residence, except when being used commercially to provide child
28 care or adult care services.
- 29 (2) A tobacco shop if smoke from the business does not migrate into an
30 enclosed area where smoking is prohibited pursuant to this Article. A
31 tobacco shop that begins operation after July 1, 2009, may only allow
32 smoking if it is located in a freestanding structure occupied solely by the
33 tobacco shop and smoke from the shop does not migrate into an enclosed
34 area where smoking is prohibited pursuant to this Article.
- 35 (3) All of the premises, facilities, and vehicles owned, operated, or leased by
36 any manufacturer or processor of tobacco products.
- 37 (4) A designated smoking guest room in a lodging establishment. No greater
38 than twenty percent (20%) of a lodging establishment's guest rooms may be
39 designated smoking guest rooms.

40 **"§ 130A-497. Implementation and enforcement.**

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

- 43 (1) Conspicuously post signs clearly stating that smoking is prohibited. The
44 signs may include the international "No Smoking" symbol, which consists of
45 a pictorial representation of a burning cigarette enclosed in a red circle with
46 a red bar across it.
- 47 (2) Remove all indoor ashtrays and other smoking receptacles.
- 48 (3) Direct a person who is smoking to extinguish the lighted tobacco product.

49 (b) Continuing to smoke in a nonsmoking area described in this Part following oral or
50 written notice by the person in charge of the area or the person's designee constitutes an

1 infraction and the person committing the infraction, may be punished by a fine of not more than
 2 fifty dollars (\$50.00).

3 (c) The Commission shall adopt rules to implement the provisions of this Article.

4 (d) The provisions of this Article and the rules adopted by the Commission to
 5 implement the provisions of this Article shall be enforced by a local health department.

6 (e) Conviction of an infraction under this section has no consequence other than
 7 payment of a penalty. A person found responsible for a violation of this section may not be
 8 assessed court costs.

9 (f) Notwithstanding G.S. 130A-25, a violation of this Part shall not be punishable as a
 10 misdemeanor.

11 "Part 2. Local Government Regulation of Smoking.

12 "**§ 130A-498. Local governments may restrict smoking in public places.**

13 (a) ~~Notwithstanding~~ Except as otherwise provided in subsection (c1) of this section, and
 14 notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the
 15 contrary, a local government may adopt an ordinance, law, or rule restricting smoking in
 16 accordance with subsection (b) of this section and enforce ordinances, board of health rules,
 17 and other laws or policies restricting or prohibiting smoking that are more restrictive than State
 18 law and that apply in buildings, on grounds, in publicly owned, leased, or operated vehicles, or
 19 in public places.

20 (b1) A county ordinance adopted under this section is subject to the provisions of
 21 G.S. 153A-122.

22 (c1) A county ordinance or other rules, laws, or policies adopted under this section may
 23 not restrict or prohibit smoking in the following places:

24 (1) A private residence, except when the residence is being used commercially
 25 to provide child care or adult care services.

26 (2) A privately owned vehicle that is not used for commercial or employment
 27 purposes.

28 (3) All of the premises, facilities, and vehicles owned, operated, or leased by
 29 any manufacturer or processor of tobacco products.

30 (b) Any local ordinance, law, or rule authorized under this section may restrict smoking
 31 only in:

32 (1) Buildings owned, leased as lessor, or the area leased as lessee and occupied
 33 by local government;

34 (2) Building and grounds wherein local health departments and departments of
 35 social services are housed;

36 (3) Repealed by Session Laws 2007-193, s. 3.1, effective August 1, 2008.

37 (4) Any place on a public transportation vehicle owned or leased by local
 38 government and used by the public; and

39 (5) Any place in a local vehicle.

40 (e) As used in this Part, "local government" means any local political subdivision of
 41 this State, any airport authority, or any authority or body created by any ordinance, joint
 42 resolution, or rules of any such entity. As used in this Part, "local government" does not include
 43 community colleges as defined in G.S. 115D-2(2).

44 (d) As used in this Part, "grounds" means the area located within 50 linear feet of a
 45 building wherein a local health department or a local **dep.artment** of social services is housed.

46 (e) A county ordinance adopted under this section is subject to the provisions of
 47 G.S. 153A-122."

48 "**§§ 130A-499 through 130A-500: Reserved for future codification purposes.**"

49 **SECTION 2.** Effective January 2, 2010, G.S. 130A-22 is amended by adding a
 50 new subsection to read:

1 "(h1) A local health director may take the following actions and may impose the
2 following administrative penalty on a person who owns, manages, operates, or otherwise
3 controls a public place or place of employment and fails to comply with the provisions of
4 Article 23 of this Chapter or with rules adopted thereunder:

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

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

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

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

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