

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 2  
Committee Substitute Favorable 3/3/09  
Committee Substitute #2 Favorable 3/25/09

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 ~~Plaees~~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.



- 1           (4)    "Grounds". – An unenclosed area owned, leased, or occupied by State or  
2           local government.
- 3           (5)    "Local government". – A local political subdivision of this State, an airport  
4           authority, or an authority or body created by an ordinance, joint resolution,  
5           or rules of any such entity.
- 6           (6)    "Local government building". – A building owned, leased as lessor, or the  
7           area leased as lessee and occupied by a local government.
- 8           (7)    "Lodging establishment". – An establishment that provides lodging for pay  
9           to the public.
- 10          (8)    "Local vehicle". – A passenger-carrying vehicle owned, leased, or otherwise  
11          controlled by local government and assigned permanently or temporarily by  
12          local government to local government employees, agencies, institutions, or  
13          facilities for official local government business.
- 14          (8a)   "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          (8b)   "Private residence". – A private dwelling that is not a child care facility, as  
18          defined in G.S. 110-86(3), and not a long-term care facility, as defined in  
19          G.S. 131E-114.3(a)(1).
- 20          (8c)   "Private vehicle". – A privately owned vehicle that is not used for  
21          commercial or employment purposes.
- 22          (8d)   "Public place". – An enclosed area to which the public is invited or in which  
23          the public is permitted.
- 24          (9)    "Smoking". – The use or possession of a lighted cigarette, lighted cigar,  
25          lighted pipe, or any other lighted tobacco product.
- 26          (10)   "State government". – The political unit for the State of North Carolina,  
27          including all agencies of the executive, judicial, and legislative branches of  
28          government.
- 29          (11)   "State government building". – A building owned, leased as lessor, or the  
30          area leased as lessee and occupied by State government.
- 31          (12)   "State vehicle". – A passenger-carrying vehicle owned, leased, or otherwise  
32          controlled by the State and assigned permanently or temporarily to a State  
33          employee or State agency or institution for official State business.
- 34          (13)   "Tobacco shop". – A business establishment the main purpose of which is  
35          the sale of tobacco, tobacco products, and accessories for such products that  
36          receives no less than seventy-five percent (75%) of its total annual revenues  
37          from the sale of tobacco, tobacco products, and accessories for such  
38          products, and does not serve food or alcohol on its premises.

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

40    **"§ 130A-493. Smoking prohibited in State government buildings and State vehicles**  
41    **prohibited vehicles.**

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

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

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

8 (1) Direct ~~any a~~ person who is smoking inside the ~~facility~~ building to extinguish  
9 the lighted smoking product.

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

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

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

23 **"§ 130A-494. Other prohibitions.**

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

26 **"§ 130A-495. Rules.**

27 The Commission shall adopt rules to implement this Part.

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

29 **"§ 130A-496. Smoking prohibited in public places and places of employment.**

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

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

34 (1) A private residence.

35 (2) A private vehicle.

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

42 (4) All of the premises, facilities, and vehicles owned, operated, or leased by  
43 any manufacturer or processor of tobacco products.

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

47 **"§ 130A-497. Implementation and enforcement.**

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

50 (1) Conspicuously post signs clearly stating that smoking is prohibited. The  
51 signs may include the international "No Smoking" symbol, which consists of

1 a pictorial representation of a burning cigarette enclosed in a red circle with  
2 a red bar across it.

3 (2) Remove all indoor ashtrays and other smoking receptacles.

4 (3) Direct a person who is smoking to extinguish the lighted tobacco product.

5 (b) Continuing to smoke in a nonsmoking area described in this Part following oral or  
6 written notice by the person in charge of the area or the person's designee constitutes an  
7 infraction, and the person committing the infraction may be punished by a fine of not more than  
8 fifty dollars (\$50.00).

9 (c) Conviction of an infraction under this section has no consequence other than  
10 payment of a penalty. A person found responsible for a violation of this section may not be  
11 assessed court costs.

12 (d) Notwithstanding G.S. 130A-25, a violation of this Part shall not be punishable as a  
13 misdemeanor.

14 (e) Administrative penalties imposed under G.S. 130A-22(h1) against a person who  
15 manages, operates, or controls a public place or place of employment and fails to comply with  
16 the provisions of this Article and the rules adopted by the Commission to implement the  
17 provisions of this Article shall only be enforced by a local health director.

18 (f) The Commission shall adopt rules to implement the provisions of this Article.

19 "Part 2. Local Government Regulation of Smoking.

20 **"§ 130A-498. Local governments may restrict smoking in public places.**

21 (a) ~~Notwithstanding~~ Except as otherwise provided in subsection (b1) of this section,  
22 and notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to  
23 the contrary, a local government may adopt an ordinance, law, or rule restricting smoking in  
24 accordance with subsection (b) of this section and enforce ordinances, board of health rules,  
25 and other laws or policies restricting or prohibiting smoking that are more restrictive than State  
26 law and that apply in local government buildings, on local government grounds, in local  
27 vehicles, or in public places. The definitions set forth in G.S. 130A-492 in Part 1A of this  
28 Article apply to this section and shall apply to any local ordinance, rule, or law adopted by a  
29 local government under this section.

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 (b1) A local ordinance or other rules, laws, or policies adopted under this section may  
41 not restrict or prohibit smoking in the following places:

42 (1) A private residence.

43 (2) A private vehicle.

44 (3) A tobacco shop if smoke from the business does not migrate into an  
45 enclosed area where smoking is prohibited pursuant to this Article. A  
46 tobacco shop that begins operation after July 1, 2009, may only allow  
47 smoking if it is located in a freestanding structure occupied solely by the  
48 tobacco shop and smoke from the shop does not migrate into an enclosed  
49 area where smoking is prohibited pursuant to this Article.

50 (4) All of the premises, facilities, and vehicles owned, operated, or leased by  
51 any manufacturer or processor of tobacco products.

1           (5) A designated smoking guest room in a lodging establishment. No greater  
2           than twenty percent (20%) of a lodging establishment's guest rooms may be  
3           designated smoking guest rooms.

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

8           (c1) Continuing to smoke in violation of a local ordinance or other rules, laws, or  
9 policies adopted under this section constitutes an infraction, and the person committing the  
10 infraction may be punished by a fine of not more than fifty dollars (\$50.00). Conviction of an  
11 infraction under this section has no consequence other than payment of a penalty. A person  
12 smoking in violation of a local ordinance or other rules, laws, or policies adopted under this  
13 section may not be assessed court costs.

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

16           (d1) Notwithstanding G.S. 130A-25 or any other provision of law, a violation of a local  
17 ordinance, rule, law, or policy adopted under this section shall not be punishable as a  
18 misdemeanor.

19           (d2) A local government may enforce an ordinance, rule, law, or policy under this  
20 section against a person who manages, operates, or controls a public place only as provided in  
21 G.S. 130A-22(h1).

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

24 **"§§ 130A-499 through 130A-500: Reserved for future codification purposes."**

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

27           "(h1) A local health director may take the following actions and may impose the  
28 following administrative penalty on a person who manages, operates, or controls a public place  
29 or place of employment and fails to comply with the provisions of Part 1C of Article 23 of this  
30 Chapter or with rules adopted thereunder or with local ordinances, rules, laws, or policies  
31 adopted pursuant to Part 2 of Article 23 of this Chapter:

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

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

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

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

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