

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 2
Committee Substitute Favorable 3/3/09
PROPOSED COMMITTEE SUBSTITUTE H2-PCS80165-RD-3

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.



- 1 (3) "Enclosed area". – An area with a roof or other overhead covering of any
2 kind and walls or side coverings of any kind, regardless of the presence of
3 openings for ingress and egress, on all sides or on all sides but one.
4 (4) "Grounds". – An unenclosed area owned, leased, or occupied by State or
5 local government.
6 (5) "Local government". – A local political subdivision of this State, an airport
7 authority, or an authority or body created by an ordinance, joint resolution,
8 or rules of any such entity.
9 (6) "Local government building". – A building owned, leased as lessor, or the
10 area leased as lessee and occupied by a local government.
11 (7) "Lodging establishment". – An establishment that provides lodging for pay
12 to the public.
13 (8) "Local vehicle". – A passenger-carrying vehicle owned, leased, or otherwise
14 controlled by local government and assigned permanently or temporarily by
15 local government to local government employees, agencies, institutions, or
16 facilities for official local government business.
17 (8a) "Place of employment". – An enclosed area under the control of a public or
18 private employer that employees use during the course of employment or for
19 any other purpose.
20 (8b) "Private residence". – A private dwelling that is not a child care facility, as
21 defined in G.S. 110-86(3), and not a long-term care facility, as defined in
22 G.S. 131E-114.3(a)(1).
23 (8c) "Private vehicle". – A privately owned vehicle that is not used for
24 commercial or employment purposes.
25 (8d) "Public place". – An enclosed area to which the public is invited or in which
26 the public is permitted.
27 (9) "Smoking". – The use or possession of a lighted cigarette, lighted cigar,
28 lighted pipe, or any other lighted tobacco product.
29 (10) "State government". – The political unit for the State of North Carolina,
30 including all agencies of the executive, judicial, and legislative branches of
31 government.
32 (11) "State government building". – A building owned, leased as lessor, or the
33 area leased as lessee and occupied by State government.
34 (12) "State vehicle". – A passenger-carrying vehicle owned, leased, or otherwise
35 controlled by the State and assigned permanently or temporarily to a State
36 employee or State agency or institution for official State business.
37 (13) "Tobacco shop". – A business establishment the main purpose of which is
38 the sale of tobacco, tobacco products, and accessories for such products that
39 receives no less than seventy-five percent (75%) of its total annual revenues
40 from the sale of tobacco, tobacco products, and accessories for such
41 products, and does not serve food or alcohol on its premises.

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

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

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

50 (b) Smoking is permitted inside State government buildings that are used for medical or
51 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-building to extinguish~~
11 ~~the 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-building~~ and
14 obtain the signature of the individual or the individual's representative
15 acknowledging 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.

37 (2) A private vehicle.

38 (3) 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 (4) All of the premises, facilities, and vehicles owned, operated, or leased by
45 any manufacturer or processor of tobacco products.

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

49 **"§ 130A-497. Implementation and enforcement.**

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

1 (1) Conspicuously post signs clearly stating that smoking is prohibited. The
2 signs may include the international "No Smoking" symbol, which consists of
3 a pictorial representation of a burning cigarette enclosed in a red circle with
4 a red bar across it.

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

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

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

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

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

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

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

21 "Part 2. Local Government Regulation of Smoking.

22 **"§ 130A-498. Local governments may restrict smoking in public places.**

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

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

34 ~~(1) Buildings owned, leased as lessor, or the area leased as lessee and occupied~~
35 ~~by local government;~~

36 ~~(2) Building and grounds wherein local health departments and departments of~~
37 ~~social services are housed;~~

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

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

41 ~~(5) Any place in a local vehicle.~~

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

44 (1) A private residence.

45 (2) A private vehicle.

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

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

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

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

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

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

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

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

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

26 **"§§ 130A-499 through 130A-500: Reserved for future codification purposes."**

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

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

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

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

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

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

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