



North Carolina Department of Health and Human Services

Pat McCrory
Governor

November 1, 2013

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

The Honorable Justin Burr, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina House of Representatives
Room 307A, Legislative Office Building
Raleigh, NC 27603

The Honorable Mark Hollo, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina House of Representatives
Room 639, Legislative Office Building
Raleigh, NC 27603

The Honorable Ralph Hise, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina Senate
Room 1026, Legislative Building
Raleigh, NC 27601

Dear Representatives Burr and Hollo; and Senator Hise:

Session Law 2013-413, Section 23 titled "Smoking Ban Rules" requires that no later than January 1, 2014, the Commission for Public Health shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of the prohibition on smoking in restaurants and bars (specifically clarify the definition of enclosed areas). The legislation further instructs that no later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending and clarifying the rules.

Pursuant to this requirement, the Department of Health and Human Services, Division of Public Health provides the attached report on behalf of the Commission for Public Health. If you have questions about the content of this report, please contact Chris Hoke at chris.hoke@dhhs.nc.gov, or at 919-707-5006.

Sincerely,

A handwritten signature in black ink, appearing to read "Aldona Wos".

Aldona Wos, M.D.
Secretary

cc: Robin Cummings
Ronald B. May
Mark Payne
Adam Sholar
Danny Stanley
Chris Hoke
Matt McKillip

Sarah Riser
Kristi Huff
Brandon Greife
Pat Porter
Susan Jacobs
Pam Kilpatrick

Attachment

www.ncdhhs.gov

Telephone 919-855-4800 • Fax 919-715-4645

Location: 101 Blair Drive • Adams Building • Raleigh, NC 27603

Mailing Address: 2001 Mail Service Center • Raleigh, NC 27699-2001

An Equal Opportunity / Affirmative Action Employer

Department of Health and Human Services

Division of Public Health

Report on Commission for Public Health Progress on Clarification of Smoking Rules

(Pursuant to Section 23 of Session Law 2013-413)

10/31/13

Section 23 of Session Law 2013-413 requires that no later than January 1, 2014, the Commission for Public Health shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General Statutes and shall specifically clarify the definition of enclosed areas for purposes of implementation of the Part. No later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending and clarifying the rules.

Pursuant to this requirement, the Department of Health and Human Services Division of Public Health provides the following information on behalf of the Commission for Public Health.

The Commission for Public Health met on August 14, 2013. There was a brief presentation provided by Sally Herndon, Head of the Tobacco Prevention and Control Branch of the NC Division of Public Health, to update Commission members on the implementation of the NC smoke-free restaurant and bars law and to provide information on the requirements of Session Law 2013-413.

One action item was completed on this topic. The timetable below was adopted to ensure the deadline of January 1, 2014 to amend and clarify its rules pursuant to G.S. 130A-497 can be met. Division of Public Health staff has worked with key stakeholders, including, but not limited to, the NC Restaurant and Lodging Association and the NC Association of Local Health Directors, to draft the clarification of enclosed areas. *Clarify the Definition of Enclosed Areas for NC Smoke-free Restaurant and Bars Law* (Attachment A) provides a clear overview of the definition of an enclosed area, provides an overview of S.L. 2013-413, and includes a copy of the draft rule clarifying the definition of an enclosed area.

Timeline

	Steps	Date
1.	Submit to Office of Administrative Hearings for Notice	September 10, 2013
2.	Notice Posted	October 1, 2013
3.	Public Hearing	After October 16, 2013
4.	Comment Period Ends	December 2, 2013
5.	Adoption by Called meeting of Commission for Public Health	December 4, 2013

ATTACHMENT A
CLARIFY THE DEFINITION OF ENCLOSED AREAS FOR NC SMOKE-FREE
RESTAURANT AND BARS LAW

S.L. 2009-27 *Prohibit Smoking in Certain Public Places* prohibits smoking in **enclosed areas** of restaurants and bars. G.S.130A-492 defines “enclosed area” as “*an area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one*”.

S.L. 2013-413 (HB74)

SMOKING BAN RULES

SECTION 23. No later than January 1, 2014, the Commission for Public Health shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General Statutes and shall specifically clarify the definition of **enclosed areas** for purposes of implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the requirements of G.S. 150B-21.4, (ii) are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes, and (iii) shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). No later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending and clarifying the rules.

Proposed Rule

CHAPTER 39 – ADULT HEALTH

SUBCHAPTER 39C – SMOKING PROHIBITED IN RESTAURANTS AND BARS

SECTION .0100 – GENERAL

10A NCAC 39C .0104 CLARIFICATION OF THE DEFINITION OF ENCLOSED AREA

(a) An area is enclosed if it has

- (1) a roof or other overhead covering and
- (2) permanent or temporary walls or side coverings on three or more sides that make up 55 percent or more of the total combined perimeter surface area.

(b) A roof, overhead covering, wall or side covering includes any permanent or temporary physical barrier or retractable divider. Examples of materials for a roof, overhead covering, wall or side covering include wood, metal, canvas, tarp, cloth, glass, tent material, plastic, vinyl sheeting, fabric shades, lattice, awning material, polyurethane sheeting or any other similar material. Walls or side coverings do not include mesh screening which is 0.011 gauge with an 18 by 16 mesh count or more open mesh size.

(c) An opening means a door, a window or any other aperture that is open to the outdoors.

(d) If the openings in an unenclosed area are covered, such that the area at that time meets the definition of being enclosed pursuant to Paragraph (a), then smoking must be prohibited in the area while the openings are so covered.

(e) If windows or doors form any part of the partition between an enclosed area and an unenclosed area that is used for smoking, these openings shall be closed at all times during the operation of the establishment except for ingress and egress to prevent migration of smoke into the enclosed area.

(f) Nothing in this Rule prohibits a restaurant or bar owner from making an unenclosed area smoke-free.

Authority G.S. 130A-497.