

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 2
RATIFIED BILL

AN ACT TO PROHIBIT SMOKING IN CERTAIN PUBLIC PLACES AND CERTAIN 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 Places, 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) "Bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001.
- (1a) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the following:
 - a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;
 - b. Has a humidor on the premises; and
 - c. Does not allow individuals under the age of 21 to enter the premises. Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.
- (1b) "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.
- (2) "Employer". – An individual person, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.
- (3) "Enclosed area". – 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.



- (4) "Grounds". – An unenclosed area owned, leased, or occupied by State or local government.
- (5) "Local government". – A local political subdivision of this State, an airport authority, or an authority or body created by an ordinance, joint resolution, or rules of any such entity.
- (6) "Local government building". – A building owned, leased as lessor, or the area leased as lessee and occupied by a local government.
- (7) "Lodging establishment". – An establishment that provides lodging for pay to the public.
- (8) "Local vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by local government and assigned permanently or temporarily by local government to local government employees, agencies, institutions, or facilities for official local government business.
- (8a) "Private club". – A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1). For the purposes of this Article, private club includes country club.
- (8b) "Private residence". – A private dwelling that is not a child care facility, as defined in G.S. 110-86(3), and not a long-term care facility, as defined in G.S. 131E-114.3(a)(1).
- (8c) "Private vehicle". – A privately owned vehicle that is not used for commercial or employment purposes.
- (8d) "Public place". – An enclosed area to which the public is invited or in which the public is permitted.
- (8e) "Restaurant". – A food and lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to Part 6 of Article 8 of this Chapter.
- (9) "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- (10) "State government". – The political unit for the State of North Carolina, including all agencies of the executive, judicial, and legislative branches of government.
- (11) "State government building". – A building owned, leased as lessor, or the area leased as lessee and occupied by State government.
- (12) "State vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the State and assigned permanently or temporarily to a State employee or State agency or institution for official State business.
- (13) "Tobacco shop". – A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of tobacco, tobacco products, and accessories for such products, and does not serve food or alcohol on its premises.

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

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

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

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

(c) The individual in charge of the State government building or the individual's designee shall post signs in conspicuous areas of the building. The signs shall state that

"smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. In addition, ~~in any State psychiatric hospital, the person who owns, manages, operates, or otherwise controls the hospital shall:~~ the individual in charge of the building or the individual's designee shall:

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

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

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

"§ 130A-494. Other prohibitions.

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

"§ 130A-495. Rules.

The Commission shall adopt rules to implement this Part.

"Part 1C. Smoking Prohibited in Restaurants and Bars.

"§ 130A-496. Smoking prohibited in restaurants and bars.

(a) Notwithstanding Article 64 of Chapter 143 of the General Statutes, smoking is prohibited in all enclosed areas of restaurants and bars, except as provided in subsection (b) of this section.

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

- (1) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.
- (2) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with this Article.
- (3) A private club.

"§ 130A-497. Implementation and enforcement.

(a) A person who manages, operates, or controls a restaurant or bar in which smoking is prohibited shall:

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

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

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

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

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

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

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

"Part 2. Local Government Regulation of Smoking.

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

(a) ~~Notwithstanding~~ Except as otherwise provided in subsection (b1) of this section, and notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt an ordinance, law, or rule restricting smoking in accordance with subsection (b) of this section, and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places. A rule or policy adopted on and after July 1, 2009 pursuant to this subsection by a local board of health or an entity exercising the powers of a local board of health must be approved by an ordinance adopted by the Board of County Commissioners of the county to which the rule applies. The definitions set forth in G.S. 130A-492 in Part 1A of this Article apply to this section and shall apply to any local ordinance, rule, or law adopted by a local government under this section.

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

- (1) ~~Buildings owned, leased as lessor, or the area leased as lessee and occupied by local government;~~
- (2) ~~Building and grounds wherein local health departments and departments of social services are housed;~~
- (3) ~~Repealed by Session Laws 2007-193, s. 3.1, effective August 1, 2008.~~
- (4) ~~Any place on a public transportation vehicle owned or leased by local government and used by the public; and~~
- (5) ~~Any place in a local vehicle.~~

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

- (1) A private residence.
- (2) A private vehicle.
- (3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to this Article.
- (4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.
- (5) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.
- (6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on

a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with this Article.

(7) A private club.

(8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 14th day of May,

2009.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2009