

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 205\*

Short Title: Prohibit Smoking in Public & Work Places. (Public)

Sponsors: Senators Purcell; Clodfelter, Davis, Dorsett, Foriest, Goss, Graham, Hartsell, Jones, Kinnaird, Malone, McKissick, Rand, Snow, and Stein.

Referred to: Judiciary I.

February 18, 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)   "Public place". – An enclosed area to which the public is invited or in which  
15          the public is permitted.
- 16          (8b)   "Place of employment". – An enclosed area under the control of a public or  
17          private employer that employees use during the course of employment or for  
18          any other purpose.
- 19          (8c)   "Tobacco shop". – A business establishment the main purpose of which is  
20          the sale of tobacco, tobacco products, and accessories for such products that  
21          receives no less than seventy-five percent (75%) of its total annual revenues  
22          from the sale of tobacco, tobacco products, and accessories for such  
23          products, and does not serve food or alcohol on its premises.
- 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           "Part 1B. Smoking Prohibited in State Government Buildings and Vehicles.

35    **"§ 130A-493. Smoking prohibited in State government buildings and State ~~vehicles~~**  
36    **prohibited vehicles.**

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

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

46           (c)    The individual in charge of the State government building or the individual's  
47           designee shall post signs in conspicuous areas of the building. The signs shall state that  
48           "smoking is prohibited" and may include the international "No Smoking" symbol, which  
49           consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red  
50           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 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 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 Public Places and Places of Employment.

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

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

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

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

(2) 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.

(3) A tobacco manufacturing or processing facility.

(4) 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.

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

(a) A person who owns, manages, operates, or otherwise controls a public place or place of employment 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) A person who continues 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 that

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

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

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

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

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

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

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

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

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

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

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

39 "**§§ 130A-499 through 130A-500: Reserved for future codification.**"

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

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

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

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

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

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

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