

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

4

HOUSE BILL 2  
Committee Substitute Favorable 3/3/09  
Committee Substitute #2 Favorable 3/25/09  
Fourth Edition Engrossed 5/2/09

Short Title: Prohibit Smoking in Public & Workplaces. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SMOKING IN PUBLIC PLACES AND 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) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivisions (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 humidior on the premises; and
- c. Does not allow minors to enter the premises.



- 1 Revenue generated from other tobacco sales, including cigarette vending  
2 machines, shall not be used to determine whether an establishment satisfies  
3 the definition of cigar bar.
- 4 (1a) "Employee". – A person who is employed by an employer, or who contracts  
5 with an employer or third person to perform services for an employer, or  
6 who otherwise performs services for an employer with or without  
7 compensation.
- 8 (2) "Employer". – An individual person, business, association, political  
9 subdivision, or other public or private entity, including a nonprofit entity,  
10 that employs or contracts for or accepts the provision of services from one or  
11 more employees.
- 12 (3) "Enclosed area". – An area with a roof or other overhead covering of any  
13 kind and walls or side coverings of any kind, regardless of the presence of  
14 openings for ingress and egress, on all sides or on all sides but one.
- 15 (4) "Grounds". – An unenclosed area owned, leased, or occupied by State or  
16 local government.
- 17 (5) "Local government". – A local political subdivision of this State, an airport  
18 authority, or an authority or body created by an ordinance, joint resolution,  
19 or rules of any such entity.
- 20 (6) "Local government building". – A building owned, leased as lessor, or the  
21 area leased as lessee and occupied by a local government.
- 22 (7) "Lodging establishment". – An establishment that provides lodging for pay  
23 to the public.
- 24 (8) "Local vehicle". – A passenger-carrying vehicle owned, leased, or otherwise  
25 controlled by local government and assigned permanently or temporarily by  
26 local government to local government employees, agencies, institutions, or  
27 facilities for official local government business.
- 28 (8a) "Place of employment". – An enclosed area under the control of a public or  
29 private employer that employees use during the course of employment or for  
30 any other purpose. A privately owned workplace is not a place of  
31 employment under this Article if it satisfies all of the following:
- 32 a. The employer is an individual person and consents to allow smoking  
33 in the workplace or, in the case of a private employer other than an  
34 individual person, all owners of the employer consent to allow  
35 smoking in the workplace;
- 36 b. The workplace is not open to employees other than owners of the  
37 employer and is not open to the public;
- 38 c. The workplace does not allow entry to minors; and
- 39 d. Smoke does not migrate into an enclosed area in which smoking is  
40 prohibited under this Article.
- 41 (8b) "Private club". – An establishment that is organized and operated solely for a  
42 social, recreational, patriotic, or fraternal purpose and that is not open to the  
43 general public, but is open only to the members of the organization and their  
44 bona fide guests, and is either incorporated as a nonprofit corporation in  
45 accordance with Chapter 55A of the General Statutes or is exempt from  
46 federal income tax under the Internal Revenue Code as defined in  
47 G.S. 105-130.2(1).
- 48 (8c) "Private residence". – A private dwelling that is not a child care facility, as  
49 defined in G.S. 110-86(3), and not a long-term care facility, as defined in  
50 G.S. 131E-114.3(a)(1).

- 1           (8d) "Private vehicle". – A privately owned vehicle that is not used for  
2 commercial or employment purposes.
- 3           (8e) "Public place". – An enclosed area to which the public is invited or in which  
4 the public is permitted.
- 5           (9) "Smoking". – The use or possession of a lighted cigarette, lighted cigar,  
6 lighted pipe, or any other lighted tobacco product.
- 7           (10) "State government". – The political unit for the State of North Carolina,  
8 including all agencies of the executive, judicial, and legislative branches of  
9 government.
- 10          (11) "State government building". – A building owned, leased as lessor, or the  
11 area leased as lessee and occupied by State government.
- 12          (12) "State vehicle". – A passenger-carrying vehicle owned, leased, or otherwise  
13 controlled by the State and assigned permanently or temporarily to a State  
14 employee or State agency or institution for official State business.
- 15          (13) "Tobacco shop". – A business establishment the main purpose of which is  
16 the sale of tobacco, tobacco products, and accessories for such products that  
17 receives no less than seventy-five percent (75%) of its total annual revenues  
18 from the sale of tobacco, tobacco products, and accessories for such  
19 products, and does not serve food or alcohol on its premises.

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

21 **"§ 130A-493. Smoking prohibited in State government buildings and State ~~vehicles~~**  
22 **prohibited vehicles.**

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

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

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

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

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

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

3 **"§ 130A-494. Other prohibitions.**

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

6 **"§ 130A-495. Rules.**

7 The Commission shall adopt rules to implement this Part.

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

9 **"§ 130A-496. Smoking prohibited in public places and places of employment.**

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

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

14 (1) A private residence.

15 (2) A private vehicle.

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

22 (4) All of the premises, facilities, and vehicles owned, operated, or leased by  
23 any tobacco products processor or manufacturer, or any tobacco leaf grower,  
24 processor or dealer.

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

28 (6) A cigar bar in operation on or before January 1, 2009 if smoke from the  
29 cigar bar does not migrate into an enclosed area where smoking is prohibited  
30 pursuant to this Article. To qualify under this subsection, the cigar bar must  
31 satisfactorily report on a quarterly basis to the Department, on a form  
32 prescribed by the Department, the revenue generated from the sale of  
33 alcoholic beverages and cigars as a percentage of quarterly gross revenue.  
34 The Department shall determine whether any additional documentation is  
35 required of the cigar bar to authenticate or verify revenue data submitted by  
36 the cigar bar. This subdivision shall not apply to any business that is  
37 established for the purpose of avoiding compliance with this Article.

38 (7) A public place or place of employment that does not provide service to or  
39 allow entry to any person younger than 18 years old, if smoke does not  
40 migrate into an enclosed area in which smoking is prohibited pursuant to this  
41 Article, and which conspicuously posts signs at all entrances and provides  
42 notice in all advertising and employment materials stating that smoking is  
43 permitted.

44 (8) A private club.

45 **"§ 130A-497. Implementation and enforcement.**

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

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

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

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

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

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

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

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

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

17                   "Part 2. Local Government Regulation of Smoking.

18 **"§ 130A-498. Local governments may restrict smoking in public places.**

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

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

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

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

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

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

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

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

40           (1) A private residence.

41           (2) A private vehicle.

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

48           (4) All of the premises, facilities, and vehicles owned, operated, or leased by  
49 any tobacco products processor or manufacturer, or any tobacco leaf grower,  
50 processor or dealer.

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           (6) A cigar bar in operation on or before January 1, 2009 if smoke from the  
5 cigar bar does not migrate into an enclosed area where smoking is prohibited  
6 pursuant to this Article. To qualify under this subsection, the cigar bar must  
7 satisfactorily report on a quarterly basis to the Department, on a form  
8 prescribed by the Department, the revenue generated from the sale of  
9 alcoholic beverages and cigars as a percentage of quarterly gross revenue.  
10 The Department shall determine whether any additional documentation is  
11 required of the cigar bar to authenticate or verify revenue data submitted by  
12 the cigar bar. This subdivision shall not apply to any business that is  
13 established for the purpose of avoiding compliance with this Article.

14           (7) A public place or place of employment that does not provide service to or  
15 allow entry to any person younger than 18 years old, if smoke does not  
16 migrate into an enclosed area in which smoking is prohibited pursuant to this  
17 Article, and which conspicuously posts signs at all entrances and provides  
18 notice in all advertising and employment materials stating that smoking is  
19 permitted.

20           (8) A private club.

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

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

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

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

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

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

41 **"§§ 130A-499 through 130A-500: Reserved for future codification purposes."**

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

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

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

- 1           (2)   Second violation. – Provide the person in violation with written notice of the  
2                   person's second violation and notification of administrative penalties to be  
3                   imposed for subsequent violations.  
4           (3)   Subsequent violations. – Impose on the person in violation an administrative  
5                   penalty of not more than two hundred dollars (\$200.00) for the third and  
6                   subsequent violations.

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

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