

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1292
(Representatives Ruby, Weisz, Delmore)
(Senators Klein, Laffen, Sinner)

AN ACT to amend and reenact sections 23-12-09 and 23-12-10.4 of the North Dakota Century Code, relating to smoking in public places and places of employment and the responsibility of proprietors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-09 of the North Dakota Century Code is amended and reenacted as follows:

23-12-09. Smoking in public places and places of employment - Definitions.

In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

1. "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages.
2. "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
3. "E-cigarette" means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor.
4. "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
5. "Employer" means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
6. "Enclosed area" means all space between a floor and ceiling that has thirty-three percent or more of the surface area of its perimeter bounded by opened or closed walls, windows, or doorways. A wall includes any physical barrier regardless of whether it is opened or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.
7. "Entrance" means an exterior door that actuates to the left or right which allows access to a public place.
8. "Health care facility" means any office or institution providing health care services or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Some examples of health care facilities include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics; nursing homes;

homes for the aging or chronically ill; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any medical professional licensed under title 43, including all specialties and subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within health care facilities, and any mobile or temporary health care facilities.

- ~~8-9.~~ "Health care services" means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological, and pharmaceutical services.
- ~~9-10.~~ "Place of employment" means an area under the control of a public or private employer, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.
- ~~10-11.~~ "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels, including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as town cars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores, including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.
- ~~11-12.~~ "Publicly owned building, vehicle, or office" means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.
- ~~12-13.~~ "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served. Some examples of restaurants include coffee shops, cafeterias, sandwich stands, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.
- ~~13-14.~~ "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.
- ~~14-15.~~ "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Act.
- ~~15-16.~~ "Sports arena" means an indoor or outdoor place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other

events. Some examples of sports arenas include sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

SECTION 2. AMENDMENT. Section 23-12-10.4 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10.4. Responsibility of proprietors.

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Act shall:

1. Clearly and conspicuously post no smoking signs or the international no smoking symbol in that place.
2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
3. ~~Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Act at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.~~
4. Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises and ashtrays that are factory-installed in vehicles.
- ~~5.4.~~ By December 6, 2012, communicate to all existing employees and to all prospective employees upon their application for employment that smoking is prohibited in that place.
- ~~6.5.~~ For places under his or her control, direct a person who is smoking in violation of this Act to extinguish the product being smoked. If the person does not stop smoking, the owner, operator, manager, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, operator, manager, or employee shall immediately report the violation to an enforcement agency identified in this Act. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, operator, manager, or employee shall not constitute a violation of the Act by the owner, operator, manager, or employee.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1292.

House Vote: Yeas 72 Nays 22 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State