INITIATED STATUTORY MEASURE NO. 4

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF MATERIAL IS NOT UNDERSCORED OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

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

23-12-09. Smoking in public places and places of employment – Definitions. In sections 23-12-09 and 23-12-11, unless the context or subject matter other 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, ~~or~~ restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages ~~if the bar is in a separately enclosed area~~.
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, battery and/or electronic circuit, 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.

~~3.~~ 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.

~~4.~~ 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 employ the services of one or more individuals.

~~5.~~ 6. "Enclosed area" means all space between a floor and a ceiling that ~~is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling~~ 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 open or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.

~~6.~~ 7. "Health care facility" means any office or institution providing health care services~~, including a hospital; clinic; ambulatory surgery center; outpatient care facility; nursing, basic, or assisted living facility and laboratory.~~ 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 of the North Dakota Century Code, 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.

~~7.~~ 8. "Health care service" ~~include~~ means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological and pharmaceutical services.

~~8.~~ 9. "Place of employment" means an area under the control of a public or private employer ~~that employees normally frequent during the course of employment~~, including ~~but not limited to~~, 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.

~~9.~~ 10. "Public place" means an ~~enclosed~~ area ~~to~~ which the public ~~has access or in which the public is permitted, including a~~ enters. Some examples of public places are publicly owned buildings, vehicles, or offices; ~~, and enclosed areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including~~ 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 ~~when any child cared for under that license is present~~; 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, ~~and~~ taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit ~~depots~~ 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; ~~services lines;~~ shopping malls; sports arenas~~, including enclosed places in outdoor arenas~~; theaters; and waiting rooms.

~~10.~~ 11. "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.

~~11.~~ 12. "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~~, including~~ .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.

~~12. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco product and accessories and in which the sale of other products is merely incidental.~~

13. "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

14. "Smoking means ~~possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted tobacco product~~ 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. "Sports arena" means ~~any facility or area, whether enclosed or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including~~ 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.

~~16. "Truckstop" means a roadside service station and restaurant that caters to truckdrivers.~~

SECTION 2. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10. Smoking restrictions – Exceptions – Retaliation – Application

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke free air, smoking is prohibited in all enclosed areas of:
   a. Public places; and
   b. Places of employment.
2. Smoking is prohibited within twenty feet of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.

~~2.~~ 3. The following areas are exempt from subsections 1 and 2:
   a. Private residences, except those residences used ~~when operating~~ as a child care, adult day care or health care facility subject to licensure by the department of human services ~~and when any child cared for under that license is present in that facility~~.
   ~~b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.~~
   ~~c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.~~
   ~~d.~~ b. Outdoor areas of places of employment, except ~~a sports arena~~ those listed in subsection two.
   ~~e.~~ c. Any area that is not commonly accessible to the public and which is part of an owner operated business having no employee other than the owner operator.
   ~~f. Bars.~~
   ~~g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.~~
   ~~h. Separately enclosed areas in truckstops which are accessible only to adults.~~

~~3.~~ 4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.

~~4.~~ 5. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this subsection shall be a class B misdemeanor.

~~5.~~ 6. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

~~6.~~ 7. ~~Before October 1, 2007, the office of management and budget shall develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds.~~ Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

SECTION 3. Section 23-12-10.1 of the North Dakota Century Code is created and enacted as follows:

23-12-10.1. 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.
5. By the effective date of this Act, communicate to all existing employees and to all prospective employees upon their application for employment that smoking is prohibited in that place.
6. 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.

SECTION 4. AMENDMENT. Section 23-12-10.2 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10.2. Complaints and enforcement – City and county ordinances and home rule charters.

1. State agencies with statutory jurisdiction over a state-owned building or office shall enforce section 23-12-10. These agencies include the fire marshal department, state department of health, department of human services, legislative council, and office of management and budget. ~~The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may adopt administrative rules to ensure compliance with section 23-12-10, including referral of violations to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.~~
2. A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions than those provided under sections 23-12-09 through 23-12-11. Nothing in this Act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of ~~environmental tobacco~~ secondhand smoke. This subsection does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.
3. The provisions of this Act shall be enforced by state's attorneys who may ask the North Dakota attorney general to adopt administrative rules to ensure compliance with this Act. State and local law enforcement agencies may apply for injunctive relief to enforce provisions of this Act.

SECTION 5. AMENDMENT. Section 23-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23-12-11. Penalty

1. An individual who smokes in an area in which smoking is prohibited under section 23-12-10 is guilty of an infraction punishable by a fine not exceeding fifty dollars.
2. ~~An~~ Except as otherwise provided in section 23-12-10(5), an owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with section 23-12-10 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.
3. In addition to the fines established by this section, violation of this Act by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
4. Violations of this Act are declared to be a public nuisance that may be abated by restraining order, preliminary or permanent injunction or other means provided by law.
5. Each day on which a violation of this Act occurs shall be considered a separate and distinct violation.

SECTION 6. Section 23-12-12 of the North Dakota Century Code is created and enacted as follows:

23-12-12. Construction and severability. This Act shall be construed liberally so as to further its purposes. The provisions of this Act are declared to be severable. If any provision, clause, sentence, or paragraph of this Act, or its application to any person or circumstances, shall be held invalid, that invalidity shall not affect the other provisions of this Act that can be given without the invalid provision or applications.

SECTION 7. REPEAL. Section 23-12-10.3 of the North Dakota Century Code is repealed.

[**23-12-10.3. Exceptions – Medical necessity.** 1. Notwithstanding the provisions of any other state or local law, a patient may smoke in a hospital licensed by the state or on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff. 2. Notwithstanding the provisions of any other state or local law, a resident of a licensed basic care facility or licensed nursing facility may smoke in the facility or on the grounds of the facility if approved by the board of the facility.]